

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF JUDITH W. OVERALL

23 Volume II, Pages 189 - 478

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1 (The following is the continued deposition
2 of JUDITH W. OVERALL, taken pursuant to Notice of
3 Taking Deposition, at the offices of Dorsey &
4 Whitney, Attorneys at Law, Pillsbury Center South,
5 220 South Sixth Street, Minneapolis, Minnesota,
6 commencing at approximately 8:30 o'clock a.m.,
7 November 21, 1997.)

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1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 JUDITH W. OVERALL

4 called as a witness, being previously
5 sworn, was examined and testified
6 as follows:

7 ADVERSE EXAMINATION (cont'd)

8 BY MR. McKENNA:

9 Q. Good morning, Ms. Overall.

10 A. Good morning.

11 Q. A few more things about your CV, please.

12 You taught, during 1992-1993, a torts course as
13 an adjunct instructor in the paralegal program at
14 Mississippi University for Women; is that right?

15 A. That's -- that's correct. I'm not looking at
16 the year, but -- right now, but I'm --

17 Yes.

18 Q. Was that one academic year? Is that what you
19 mean to suggest?

20 A. No. I taught that one semester, I believe.

21 Q. Just one semester.

22 A. That academic year, but one semester.

23 Q. Did you teach anything about fraud and abuse in
24 the health-care delivery system in that course?

25 A. No.

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1 Q. And I take it that the work that you did at
2 Norton Air Force Base in 1977 to '81 was work that
3 you did in connection with your husband being posted
4 in that area?

5 A. It was done there geographically because he was
6 stationed there, yes.

7 Q. All right. Was there anything about that that
8 had anything to do with fraud and abuse in the
9 health-care delivery system?

10 A. No.

11 Q. And you listed a number of seminars that you
12 were a speaker at. First of all, let me --

13 March 19th, 1993, you were a guest speaker at
14 the Jackson Central Lion's Club in Jackson,
15 Mississippi, on the subject of health-care reform and
16 long-term care issues?

17 A. Yes.

18 Q. Was any part of that discussion --

19 I take it that was just a luncheon speech?

20 A. That was a luncheon speech.

21 Q. Was any part of that having to do with fraud and
22 abuse?

23 A. I don't recall the complete speech. If there
24 was anything, it was not an integral part.

25 (Discussion off the record.)

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1 BY MR. McKENNA:

2 Q. Did you do anything especially to prepare for
3 that speech, or you just spoke based upon your
4 training and experience at the time?

5 A. I don't remember what I did to prepare for that
6 speech.

7 Q. And you were the Attorney General's
8 representative on the advisory board of a -- of a
9 grant committee involving preparing state governments
10 for an age quake in the 21st century. How long did
11 that last?

12 A. The entire process lasted for quite a while, but
13 my involvement was not --

14 I was only sitting on a -- a board or a
15 committee. I was not involved with the whole
16 project.

17 Q. And you didn't do any research in connection
18 with that; simply went to the meetings?

19 A. Right.

20 Q. Did any part of that have to do with fraud and
21 abuse in the health-care delivery system?

22 A. Not that I remember, no.

23 Q. And when you spoke to the American Society of
24 Women Accountants in Jackson, Mississippi, on May 7
25 and 8, 1993, did any part of that have to do with

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1 fraud and abuse in the health-care delivery system?

2 A. If it did, and I don't remember completely, but
3 if it did, it would have been from a recipient point
4 of view because it was talking about Medicaid
5 eligibility rules.

6 Q. Would that also be true of your discussions at
7 the National Business Institute on the subject of
8 "Mississippi Elder Law: The Basics and Beyond" in
9 Jackson, Mississippi, on February 25, 1993, that it
10 had to do with recipient qualification?

11 A. If I remember correctly, it was more about
12 qualifications for Medicaid.

13 Q. All right. And you spoke --

14 A. It was about -- excuse me. It was about the
15 system, but I mean it was more from that point of
16 view, I believe.

17 Q. You spoke at a health-care seminar in New
18 Orleans on September 22, 1995, on managed care in the
19 '90s, and you taught a session on Medicare fraud and
20 abuse at that seminar?

21 MR. LINVILLE: Object to the form of the
22 question. If you're reading the topic there, I think
23 you misread it.

24 MR. McKENNA: What part did I misread? It
25 was on the subject of managed care in the '90s.

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1 MR. LINVILLE: You said "Medicare fraud and
2 abuse." It's "Medicare/Medicaid fraud and abuse."

3 MR. McKENNA: Ah. Thank you for that
4 correction.

5 Q. Do you know what I'm talking about, Ms. Overall?

6 A. Yes, I do.

7 Q. Did you lecture on that subject during that
8 seminar?

9 A. Yes, as a member of a panel.

10 Q. All right. How many others were on the panel?

11 A. Two.

12 Q. And so there were three of you. And did you --

13 Were you given an hour during that seminar for
14 that subject?

15 A. I don't remember. We each spoke, and then there
16 was a question-and-answer session, so I can't --

17 I don't remember.

18 Q. All right. And you refer to some seminars for
19 nursing home administrators in 1992 in New Orleans,
20 Biloxi and Jackson. Did you run those seminars
21 yourself?

22 A. That was as a part of LTC 2000.

23 Q. All right. And how much in each of those did
24 you personally do in terms of time on the podium?

25 A. Probably at least half of what was taught.

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1 Q. And what portion of those seminars was devoted
2 to the subject of health-care fraud and abuse,
3 approximately? A percentage.

4 A. I don't remember. It was a topic for like one
5 session of the seminar, as I remember, so whether --

6 Q. I take it the general tone of this was to assist
7 people in the industry to comply with industry rules
8 and regulations; is that true?

9 A. Yes. And to make them aware of rules and
10 regulations. It was continuing education for nursing
11 home administrators.

12 Q. And in your CV you address a number of other
13 issues, such as abuse and neglect and exploitation of
14 residents, and Americans with Disabilities Act, and
15 some other things; correct?

16 A. That's correct.

17 Q. So there was quite a lot to cover during those
18 seminars, and fraud and abuse was only a small part
19 of it. Is that a fair statement?

20 A. Fraud and abuse was only a part of it, that is a
21 fair statement.

22 Q. But you don't agree it was a small part of it.
23 Is that why you corrected my statement?

24 A. I can't remember how long the sessions were on
25 each topic, but it was no -- to no less a degree than

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1 any other topics.

2 Q. Are you saying that it received equal treatment
3 with the other topics that you've listed in your CV?

4 A. Yes, it at least received equal.

5 Q. And as you said yesterday, these seminars were
6 one and at the most two days in length; is that
7 right?

8 A. That's correct.

9 Q. During the times that you have made
10 presentations to classes that you've been teaching on
11 the subject of fraud and abuse, have you ever brought
12 in guest speakers to discuss that subject?

13 A. Yes, I have.

14 Q. And is that usually your pattern, to bring in a
15 guest speaker to address the subject of fraud and
16 abuse?

17 A. No, it's -- it's an add-on, so to speak.

18 Q. Is that because you don't feel qualified to
19 discuss fraud and abuse in those settings?

20 A. No, it is not.

21 Q. Then why is it that you select a guest speaker
22 to address that topic?

23 A. Same reason I ask guest speakers to comment on
24 several topics, so they don't hear only me talk.

25 Q. I see. But you feel yourself equally qualified

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1 with the guest speakers, is that a fair statement, to
2 talk about fraud and abuse?

3 A. Yes.

4 Q. What other subjects do you bring in guest
5 speakers on in the courses that you teach?

6 A. Well managerial communications, human resource
7 management. I have brought in speakers who are
8 long-term care consultants to talk about subacute
9 care, how you set up subacute units. My pattern is
10 to bring people in who are literally in the field
11 now, as well as what I know, just -- just so that
12 they get different points of view.

13 Q. When the fraud and abuse subject comes up in the
14 courses you teach, is it usually your pattern to
15 bring in a guest speaker on fraud and abuse?

16 A. No, I don't always bring in a guest speaker. I
17 have.

18 Q. Would you say you've done it half the time when
19 you have addressed that subject in the courses you
20 taught?

21 A. No, I think not. I'd have to --

22 Q. Approximately what percentage of the time have
23 you deployed guest speakers on the subject of fraud
24 and abuse in the courses you have taught?

25 MR. LINVILLE: Object to the form.

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1 A. As I remember, I brought in a guest speaker once
2 as an adjunct, full-time I think, once in the
3 long-term care class, and once in the EMHA class.
4 That's all I remember at the moment.

5 Q. Was that within the last year?

6 A. Yes, one of them.

7 Q. And the other one was when?

8 A. Hmm, I suppose it was fall of --

9 Well this is fall of '97, so it must have been
10 fall of '96.

11 Q. Do you use a particular text in any one of the
12 classes that you teach?

13 A. Yes.

14 Q. And what are those texts?

15 A. In the management course it's "Essentials of
16 Health Care Management," I believe.

17 Q. And the authors?

18 A. Short --

19 It's written by a man named Shortell.

20 Q. All right.

21 A. In the long-term care class it's "The Essentials
22 of Long Term Care Administration." The author's name
23 is Goldsmith, I believe.

24 And in health law it is "Health Law," the
25 standard one you see. Fuhrman is the author.

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- 1 Q. Fuhrman?
- 2 A. (Nodding.)
- 3 Q. Any other text that you use?
- 4 A. No.
- 5 Q. Do you use any --
- 6 A. I mean I've used different ones in the past.
- 7 Q. Tell me which ones you've used in the past on
- 8 the subject of health law.
- 9 A. That's the text I'm using.
- 10 Q. Do you use any auxiliary materials to the text?
- 11 A. Yes. Quite often I give handouts.
- 12 Q. Have you prepared any handouts on the subject of
- 13 fraud and abuse for any of your courses?
- 14 A. Yes.
- 15 Q. And those handouts are still in your possession?
- 16 A. They're in my possession. I mean I -- I don't
- 17 know that I still have them grouped together as a
- 18 handout, but --
- 19 Q. Can you gather them together and provide them to
- 20 counsel?
- 21 A. Yes, I will.
- 22 Q. What do those handouts consist of on the subject
- 23 of fraud and abuse?
- 24 A. Some of it is --
- 25 I have to go back and look. I mean some of it

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1 may be statutory. Much of it's articles about what's
2 happened in fraud and abuse cases, that type of
3 thing.

4 Q. But you're saying you don't have any set package
5 of things that you hand out?

6 A. That's correct.

7 Q. It differs from course to course; correct?

8 A. It differs from course to course, it differs
9 from semester to semester, because the law changes.

10 Q. Okay. And can you remember the names or the
11 subject matters of some of the articles that you've
12 used?

13 A. Not offhand.

14 Q. And what subjects under the broad heading of
15 fraud and abuse in the health-care system do these
16 articles address?

17 A. Some address fraudulent billing. Quite
18 frequently that -- that's one of the topics. Some, I
19 think, talk about the repercussions of a provider
20 having been charged with fraud and abuse. Some talk
21 about different big cases, that type of thing.

22 Q. These courses that you teach are intended
23 primarily for people who will be out working in the
24 industry; are they not?

25 A. That's correct.

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1 Q. And so I take it that you select articles that
2 provide perhaps a series of cautionary tales to
3 people who might be out in the industry; would that
4 be a fair statement?

5 MR. LINVILLE: Object to the form.

6 A. It's fair to say that that's a part of them,
7 yes.

8 Q. How many students, approximately, in each of
9 these classes?

10 A. In the management class this semester, for
11 example, there are 90; in the long-term care class
12 there are 14 or 15; the enrollment in the health law
13 class is usually around 25.

14 Q. Is that fairly typical throughout the period of
15 time that you have been at Tulane teaching those
16 courses, that size of a class?

17 A. Yes.

18 Q. We spent a good deal of time going over your
19 curriculum vitae. I want to ask you to tell me in
20 your own words, summarize for me the reasons why you
21 believe you are qualified to give expert testimony on
22 the -- expert testimony on the subject of fraud and
23 abuse in the Minnesota Medicaid program.

24 MR. LINVILLE: Object to the form.

25 A. I believe I have seen fraud and abuse, studied

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1 fraud and abuse. I've seen fraud and abuse from a
2 state, in quotes, standpoint, learning how that
3 system worked to try to combat fraud and abuse in the
4 health -- in the Medicaid system in particular,
5 but --

6 Spent a lot of time working with the OIG on some
7 of our cases, so therefore was introduced also into
8 the Medicare component of it. I spent that part of
9 my life learning how the system works and how fraud
10 and abuse is combatted. And then I moved from that
11 side to the provider side, and so I believe that I
12 have a -- an idea from a provider side, too, how one
13 should try and comply with the rules and regulations
14 and what can happen to you if you do not. And I've
15 continued to study and to teach it.

16 Q. Anything you want to add to that?

17 A. I think not.

18 Q. And let me ask you the same question: Please
19 summarize the reasons why you feel you are qualified
20 to give expert testimony about the subject of fraud
21 and abuse in connection with Minnesota Blue Cross
22 Blue Shield.

23 MR. LINVILLE: Object to the form.

24 A. Because I have a knowledge of types of fraud and
25 abuse that are common throughout the United States

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1 and of the basic functions of units such as SURS
2 units, et cetera. I think I am qualified to do what
3 I was asked to do, which is look at this system.

4 Q. Anything else you want to add?

5 A. I think not.

6 Q. Do you have any idea how it was that you came to
7 be selected as an expert witness in this matter?

8 MR. LINVILLE: Let me just object here,
9 just caution that I'm sure counsel's not asking you
10 for any conversations you've had with -- with
11 counsel, the substance of any of those
12 conversations.

13 MR. McKENNA: I'm not asking for the
14 substance of any conversations with counsel.

15 A. I -- I think I was recommended.

16 Q. And do you know who recommended you?

17 A. I think Dr. Hugh Long.

18 Q. And who is he?

19 A. Dr. Long is a member of the Tulane faculty.

20 Q. And what subjects does he teach?

21 A. He teaches a lot of subjects. He's primarily a
22 financial -- health-care financial expert.

23 Q. And in what connection do you have interaction
24 with Dr. Long?

25 A. Just that we sit on the same faculty.

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1 Q. Well are you a member of committees with him? A
2 social friend?

3 A. I have sat on a committee with him, and we are
4 on the same faculty.

5 Q. Well how many people are on the Tulane faculty?
6 Must be hundreds; right?

7 A. No.

8 MR. LINVILLE: Object to the form.

9 A. Yes. Dr. Long is a member of our department
10 faculty.

11 Q. I see. And so Dr. Long, as a member of your
12 department faculty, knows about the extent of your
13 work in this area; is that right?

14 A. Yes.

15 Q. And it is no more close an association than
16 that. I mean he's not a mentor of yours or an
17 advisor or anything like that?

18 A. No.

19 Q. Not your supervisor?

20 A. No.

21 Q. Who were you first contacted by in order to
22 begin your work on this case?

23 A. Are you talking about the tobacco litigation?

24 Q. I'm talking about this case, State of Minnesota
25 and Blue Cross Blue Shield versus the tobacco

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1 industry.

2 A. I was contacted by Jack Linville.

3 Q. Okay. And when was that?

4 A. The best of my recollection, somewhere around
5 April or May of this year.

6 Q. And had you already been working for some time
7 on the Florida matter at that time?

8 A. I -- I --

9 Yes, I had done some work on Florida at that
10 time.

11 Q. Well how long had you been working on the
12 Florida matter at that time?

13 A. I can't remember when I started.

14 Q. Had you nearly finished your work?

15 A. Yes.

16 Q. And what was it that you were asked to do in
17 connection with this Minnesota tobacco case?

18 A. I was asked to look at the documents, et cetera,
19 that had been produced, and the Medicaid system, and
20 to render an opinion about what I thought about an
21 appropriate payment in the state of Minnesota
22 Medicaid program.

23 Q. And have you listed as a part of your report all
24 of the documents that you were provided?

25 A. I have seen a lot more documents than --

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1 I might look. I think you'll be getting an
2 update, because I've seen quite a few documents in
3 the last two weeks. I mean just --

4 Q. I will be getting an update, is that what you
5 just said? After your deposition, you're going to
6 provide an update on your report?

7 A. I think you have been updated.

8 THE WITNESS: Is that not correct?

9 MR. LINVILLE: Just -- just to clear this
10 up, you do have, I think, at least two supplements to
11 this. The materials should be --

12 MR. McKENNA: Well I have a supplement in
13 terms of a deposition of Ms. Kriha, and an affidavit
14 from a -- from a member of an accounting firm. Is
15 that the supplementation that you're talking about?

16 MR. LINVILLE: That's one of them, yes.

17 There was an earlier supplementation as well.

18 Just so the record is clear, to the extent that
19 documents were designated, we didn't include them in
20 our supplementation -- designated by the plaintiffs
21 in connection with the deposition, we didn't include
22 them, so those would be documents that she has had an
23 opportunity to review.

24 Q. Well let me ask you this then: Are you telling
25 me that the documents that you were provided up until

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1 the time that you wrote your report, are all of those
2 listed on Appendix II-A?

3 A. Yes.

4 Q. And in addition to these plaintiffs' documents
5 and deposition testimony, you've listed in Appendix
6 II-B a number of public sources that you reviewed; is
7 that right?

8 A. Uh-huh.

9 THE REPORTER: Your answer?

10 THE WITNESS: Yes.

11 Q. And did you review other public sources in
12 connection with preparing your report?

13 A. No.

14 Q. And then since that time you've been afforded
15 additional materials; correct?

16 A. Since this time?

17 Q. Yes.

18 A. Yes. Correct.

19 Q. Where is your file in this matter?

20 A. It's at my office in Tulane.

21 Q. You didn't bring it with you to the deposition?

22 No?

23 A. I have some of the depositions with me.

24 Q. Well how did you select what you were going to
25 bring with you to the deposition?

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1 A. I brought what I was given last, which I still
2 continue to read.

3 Q. Okay. So the deposition --

4 The original documents that you looked at with
5 any marginalia and notes and so forth, you've left
6 those in your office in Tulane; is that right?

7 A. Uh-huh.

8 THE REPORTER: Your answer?

9 THE WITNESS: Yes.

10 Q. Were you told not to bring them?

11 A. No, I was not told not to bring them.

12 Q. With respect to this extensive listing of
13 documents which is attached to your -- to your
14 report, I take it that as you reviewed those you made
15 notes as to which parts of those were important to
16 you that you'd want to go back and look at?

17 A. I underlined and highlighted, that's correct.

18 Q. I see. So that if you want to go back at some
19 point and refresh your recollection about what you
20 thought was important among all of the documents
21 which are listed on Appendix II-A, you'd have to page
22 through them and look at your highlights and your
23 notes; is that right?

24 MR. LINVILLE: Object to the form.

25 A. That's where my notes are, yes.

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1 Q. Okay. Well so there isn't anyplace, for
2 example, where you kept a short listing of the things
3 that you thought were important in the deposition of
4 Robert Baird, for example.

5 A. I have made on Robert Baird's deposition like a
6 note, but I have noted throughout --

7 I mean primarily what I've noted is -- is
8 highlighted in those.

9 Q. So that the only notes that you kept about
10 Robert Baird's deposition are those which you wrote
11 on the face of it and interleaved into the pages; is
12 that right?

13 A. Which is --

14 Q. Marginalia?

15 A. Yes, that's what I've done with every
16 deposition.

17 Q. So my question is that if you wanted to go back
18 and look at and refresh yourself about something that
19 Mr. Baird said, the only place you'd be able to go is
20 to the deposition transcript and look at the notes
21 you made on the front and page through it and see
22 what you highlighted or wrote on the pages of the
23 deposition; is that true?

24 MR. LINVILLE: Object to the form.

25 A. My notes in connection with Robert Baird are on

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1 the Robert Baird -- my copy of the Robert Baird
2 transcript.

3 Q. And no place else.

4 A. As I recall. I mean that -- that's been my
5 pattern through all of this, is --

6 Q. That's my next question. That's true with all
7 of these documents. The only place where you kept
8 any notes is on the document themselves; is that
9 right?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes, that's where all --

13 Yes.

14 Q. And I note, for example, on page 18 of your
15 report, you state that Mr. Baird agrees with your
16 assessment on that particular subject in his
17 deposition testimony. Did you do not -- did you not
18 do that?

19 A. Yes, I did.

20 Q. So if I ask you today where in Mr. Baird's
21 deposition does he state his agreement with you, you
22 wouldn't be able to tell me because you don't have
23 his deposition with you; right?

24 MR. LINVILLE: Object to the form.

25 A. That's correct.

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1 Q. During the time that you were preparing yourself
2 for your work in this case, did you ever talk to
3 anybody in Minnesota about the Medicaid system?

4 A. No.

5 Q. Did you ever talk to anybody in Minnesota about
6 Blue Cross Blue Shield in Minnesota?

7 A. No.

8 Q. Did you ever talk to anybody, aside from
9 counsel, with respect to the subject matter of your
10 testimony?

11 MR. LINVILLE: Object to form. Do you mean
12 in Minnesota, or do you mean anybody anywhere?

13 MR. McKENNA: No, I mean anybody.

14 MR. LINVILLE: Okay.

15 A. No.

16 Q. How much time did you spend studying the matter
17 before you rendered a preliminary opinion or report
18 to counsel?

19 MR. LINVILLE: Object to the form.

20 A. I don't remember specifically. Probably about
21 three or four full days.

22 Q. All right. And then did you have verbal
23 conversations, or did you send a preliminary written
24 report?

25 A. Verbal conversation.

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1 Q. And that verbal conversation, what -- what next
2 step did that lead to? Without telling me what was
3 in the conversation, what did you do next?

4 A. I had the opinion typed.

5 Q. Well were those conversations on the telephone,
6 or did you go to New York, or did somebody come to
7 visit you?

8 A. I went to New York.

9 Q. Okay. And how long were those conferences?

10 MR. LINVILLE: Object to the form.

11 A. They varied. They were --

12 The conferences were basically quite short,
13 actually.

14 Q. And how long were you in New York in connection
15 with that first go-around?

16 A. Three or four days.

17 Q. Yeah. But the conferences were short, a short
18 period of time each day?

19 A. Yes.

20 Q. And after that, then you went back to New
21 Orleans and prepared a written version of your
22 report?

23 A. No. I dictated the written version of my report
24 in New York.

25 Q. I see. And then the typing was done by your

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1 staff in the office of the attorneys?

2 A. That's correct.

3 Q. So that if I asked you the meaning of the
4 computer numbers in the lower left-hand corner of
5 each page of your report, those would be something
6 interior to the lawyers' office and not something
7 you'd be able to explain to me; is that true?

8 A. That's true.

9 Q. So that after this report was typed the first
10 time around --

11 Were you still in New York at that time? Did
12 you review a draft of it before you left New York?

13 A. It was complete before I left New York.

14 Q. Okay. Was there more than one draft?

15 A. There was a -- there was --

16 There were typographical corrections made. It
17 was not a -- there was no change in the substance of
18 the draft.

19 Q. So are you saying, then, that the -- that you
20 dictated this with a -- with a dictaphone or cassette
21 recorder of some kind?

22 A. No. I basically discussed here are -- here's
23 what I'm saying.

24 Q. And then someone else dictated the actual text
25 of this; is that what you're saying?

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1 A. No. They wrote down what I said.

2 Q. And who is "they?" A stenographer? Or was it
3 one of the attorneys?

4 A. I don't know the capacity of one of them. I
5 don't remember.

6 Q. Well let me see if I can't come at this a
7 different direction.

8 In the course of meetings with the lawyers,
9 there may have been one or two people there whose
10 capacity you didn't understand, but most of the
11 people in the meeting were you and the lawyers; is
12 that true?

13 A. That's --

14 Yes.

15 Q. And in that --

16 In those conferences, you would state what your
17 opinion was, and somebody would write that down.

18 A. Right.

19 Q. And then later that would be presented to you in
20 a typewritten form; correct?

21 A. Correct.

22 Q. And all you did with respect to that typewritten
23 form was to go through and correct typographical
24 errors; is that so?

25 MR. LINVILLE: Object to the form.

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1 Counsel, just so we're clear here, I think the
2 ground rules are that we're not supposed to inquire
3 on the substance of prior drafts. I just want to
4 make sure the witness and you understand that in
5 terms of --

6 MR. McKENNA: Well she's the one who said
7 there were typographical errors.

8 MR. LINVILLE: That's why I want to make
9 sure everybody understands the ground rules here.
10 A. If there had been something in here that I did
11 not say, I would have made a change, but there was
12 not.

13 Q. However, what you have said to me, if I
14 understand it correctly, is that you did not dictate
15 this verbatim, that you spoke about what your point
16 of view was on this and that that was somehow
17 translated into writing; is that right?

18 A. It basically says exactly what I said.

19 Q. No. Please try to pay attention to my question.
20 You did not dictate this verbatim, but you
21 expressed your point of view on these subjects and it
22 was somehow translated into writing for you; is that
23 correct?

24 A. That is correct.

25 Q. So then after --

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1 When was this conference in New York, this
2 several-day conference?

3 A. Early June, I believe.

4 Q. And at that time were you also given an
5 opportunity to look at the reports of the plaintiffs'
6 experts?

7 A. No. I saw -- I --

8 I've seen one.

9 Q. What did --

10 What is it that you saw, do you recall?

11 A. I saw the --

12 The only one I recall seeing is the damage --
13 the here's what we're claiming in damages. I don't
14 remember what it's called, but it's the one to do
15 with damages.

16 Q. In your report on page three, at the very last
17 line, please follow along with me and tell me whether
18 I understand correctly what's in your report. "In
19 reviewing what I understand is the report of the
20 plaintiffs' principal damage experts, I found no
21 mention of the possibility that fraud and abuse may
22 have inflated inappropriately the health care
23 expenditures that form the basis of plaintiffs'
24 damage calculations." Did I read that correctly?

25 A. Yes.

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1 Q. And what you're telling me is that the report
2 that you saw was the one from the Johns Hopkins folks
3 with respect to the dollar amount of damages in the
4 case?

5 A. The one I saw was the one that describes a model
6 of how to calculate damages.

7 Q. But you only saw one report of experts; is that
8 true?

9 A. That's -- that's true.

10 Q. Have you been made aware that the plaintiffs
11 have retained experts on a broad variety of subjects,
12 more than just the economic model with respect to
13 damages?

14 A. Am I aware of it?

15 Q. Yes.

16 A. I don't know that it's anything that's ever even
17 been discussed with me.

18 Q. Okay. While you were in New York, did you do
19 any further review of documents, aside from looking
20 at this expert report?

21 A. What expert --

22 The plaintiffs' expert report?

23 Q. Yes.

24 A. Yes, I did an enormous amount of reviewing of
25 documents.

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- 1 Q. In counsel's office.
- 2 A. Yes. Well, in counsel's office and in my hotel
- 3 room.
- 4 Q. Did you bring with you documents from New
- 5 Orleans to review?
- 6 A. No.
- 7 Q. So the things that you reviewed in your hotel
- 8 room were things that they sent home with you from
- 9 counsel's office?
- 10 A. There were things I requested to take and read.
- 11 Q. My question is: The things that you took to
- 12 your hotel room to review are things you took with
- 13 you from counsel's office; correct?
- 14 A. Yes. That's where all the documents were.
- 15 Q. Well you didn't go to the library or something
- 16 like that, you -- you didn't bring anything with you,
- 17 and what you read in your room you got from the
- 18 lawyers. Is that true?
- 19 A. That's correct.
- 20 Q. Okay. Approximately how much time did you spend
- 21 studying additional documents and materials while you
- 22 were in New York?
- 23 A. Almost the entire time I was in New York I was
- 24 reading.
- 25 Q. All right. Now, however, at the time that you

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1 went to New York, you had already come to some
2 conclusions about the matter; is that true?

3 MR. LINVILLE: Object to the form.

4 A. No. At the time I arrived in New York I was not
5 ready to say one way or another what I thought.

6 Q. I see. And were some of the things that you
7 took to your hotel room to read things that counsel
8 suggested that you read?

9 A. What counsel did was provide for me basically
10 everything that had been produced in front of me on a
11 big table and said, "Here they are," and I spent
12 three or four days reading this stuff.

13 Q. Now you know that I'm talking about New York
14 now; don't you?

15 A. What?

16 Q. You know that I'm talking about your visit to
17 New York.

18 A. And that's what I'm describing to you.

19 Q. You didn't read that stuff during the three or
20 four days that you devoted to the subject back in
21 Louisiana?

22 A. I never said I had devoted three or four days
23 back in Louisiana.

24 Q. All right. Let me back up.

25 How much time did you spend in Louisiana

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1 discussing this? I understood you to tell me you
2 spent three or four days on it.

3 A. No. I'm sorry, that -- if that's what I --
4 I didn't mean to convey that.

5 Q. All right. When you were asked to look at this
6 matter, did you do any work on the subject in terms
7 of research before rendering any preliminary opinions
8 to counsel while you were still in Louisiana?

9 MR. LINVILLE: Object to the form.

10 A. Not specific to Minnesota. I reviewed some of
11 my own materials on fraud and abuse, but the only --

12 I mean I waited until I had read all of the
13 Minnesota documents before I could say anything.

14 There was no way not to do that.

15 Q. Okay. Well had you been provided while you were
16 still in Louisiana with all the Minnesota documents?

17 A. No.

18 Q. Okay. Did you see any of them before you went
19 to New York?

20 A. Yes.

21 Q. What?

22 A. I had seen the plaintiffs' experts' damage
23 opinion, basically, and possibly the Minnesota
24 statute, I don't remember for sure, and perhaps a
25 document that describes the Minnesota welfare

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1 programs. I'm not sure that was the document, but --
2 that's what I remember at the moment.

3 Q. So you believe that you've told me now all of
4 the things that you had pertaining to the Minnesota
5 case before you went to New York; correct?

6 A. All that I --

7 All that I had or all that I had read?

8 Q. Well how did you read something you didn't have?

9 A. I couldn't read something I didn't have.

10 Q. Right.

11 A. But I believe I had a few more documents than I
12 have just described to you, but I did not have time
13 to read them before I got to New York.

14 Q. I see. What were the additional documents --

15 A. But I --

16 Q. -- that you didn't have time to read?

17 A. I can't remember them. I'm not -- it's not --

18 Q. All right. At any rate, the documents that you
19 had reviewed, whether or not you had them before you
20 went to New York, you've described to me; correct?

21 MR. LINVILLE: Object to the form.

22 A. The best I remember at the moment.

23 Q. When you say "the Minnesota statute," do you
24 mean the Minnesota Medicaid statutes?

25 A. I mean the -- the statutes that describe the

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- 1 Minnesota Medicaid program.
- 2 Q. All right. Did you have the complaint in the
- 3 matter?
- 4 A. Yes, I did have the complaint.
- 5 Q. Had you read that before you went to New York?
- 6 A. Yes, I had.
- 7 Q. And when you got to New York, one of the things
- 8 that you were met with was a table full of materials
- 9 that you read at attorneys' offices and back in your
- 10 hotel room; correct?
- 11 A. That's correct.
- 12 Q. Did you take any materials with you when you
- 13 went to New York?
- 14 A. Yes. I took whatever I already had.
- 15 Q. Okay. Did you take any public sources with you
- 16 when you went to New York?
- 17 A. I can't remember whether I carried any of the
- 18 congressional hearings and stuff, I -- I don't
- 19 remember whether I actually carried them with me or
- 20 not.
- 21 Q. Once you read these documents in Minnesota -- in
- 22 New York during that three- or four-day period, did
- 23 you then take them back with you to Louisiana on your
- 24 way back?
- 25 A. I -- I took back with me whatever I carried,

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1 yes. I specifically don't remember what all I took
2 with me.

3 Q. Well did you --

4 Did you ever get all of these documents in
5 Louisiana?

6 A. Yes.

7 Q. Okay. And you didn't take them back with you.
8 Some of them were shipped with you; is that what
9 you're saying?

10 A. Yes. If I didn't take them back, they would
11 still be there.

12 Q. Have you ever looked at them since the time you
13 reviewed them in New York?

14 A. Some of them.

15 Q. Do you remember which ones you looked at since
16 the time you looked at them in New York?

17 A. No, because I had been produced --

18 I've had volumes produced to me in the --
19 consistently, and I've been continuing to read even
20 new stuff.

21 Q. Was Exhibit -- Appendix II-B to your report also
22 prepared while you were in New York? I note that it
23 bears the same --

24 A. Yes, it was.

25 Q. Okay. Do you have a recollection of looking at

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- 1 any of those while you were in New York?
- 2 A. Yes.
- 3 Q. Which ones?
- 4 A. I looked at everything that's on the page.
- 5 Q. While you were in New York?
- 6 A. Yes.
- 7 Q. Do you believe that you also looked at all of
- 8 the documents which are in Appendix II-A, the
- 9 Minnesota documents, while you were in New York?
- 10 A. Yes, I do.
- 11 Q. Did you read them all?
- 12 A. I read them all. Now did I read them --
- 13 I mean I read them all, yes.
- 14 Q. Yes. And was that the time that you made the
- 15 notations in the margins and underlined and on the
- 16 cover of the documents as you described, while you
- 17 were in New York?
- 18 A. I don't remember if I did it or not. They're on
- 19 my copies that I now have in my office, but I --
- 20 Q. Did you at any time have a research assistant in
- 21 connection with the preparation for your testimony
- 22 here?
- 23 A. No.
- 24 Q. Did you do any research yourself, utilizing a
- 25 computer, for example?

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1 A. No.

2 Q. Did you do any research outside of the materials
3 that were in your own office and those materials
4 which were provided by counsel to you?

5 A. No.

6 Q. After the session that you had in New York, when
7 was the next time you spent some time on this case?

8 A. In September, I believe.

9 Q. And what did you --

10 (Discussion off the record.)

11 Q. And what did you do then?

12 A. I read more documents. I met with counsel.

13 Q. And at that time were you preparing for the
14 deposition?

15 A. I wasn't asked to prepare for the deposition,
16 no. I was just still trying to read documents.

17 Q. Were these documents new documents to you that
18 you were reading?

19 A. I received new documents several times, seems
20 like every day. Consistently receiving new
21 documents. So the -- the best that I remember, what
22 I was looking at was new documents --

23 I don't remember.

24 Q. Were they depositions, the new documents that
25 you were given?

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1 A. I have received -- I have received depositions
2 as new documents, yes, as they've been finished, up
3 until even last week.

4 Q. Were they depositions, the new documents that
5 you were receiving?

6 A. Some of them were depositions.

7 Q. Okay. What other documents aside from
8 depositions were they?

9 A. I -- I believe primarily they are depositions.
10 I have to --

11 Q. Were they primarily depositions of
12 representatives of the Department of Human Services
13 and Blue Cross Blue Shield that were taken over the
14 course of this last summer and fall?

15 A. I have those depositions, yes. And I did not
16 get them all at the same time.

17 Q. I'm trying to get a handle on primarily what
18 this stuff was, and I ask you: Were they primarily
19 depositions of DHS and Blue Cross Blue Shield folks
20 taken over this summer and fall? Now if they were
21 not primarily that, then tell me what they were.

22 A. Well I have received copies of depositions,
23 that's correct; I have exhibits, boxes I think; I
24 have received things like this affidavit that just
25 came out. That was late, even up to last week I was

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1 still receiving things, so it's -- it's a combination
2 of.

3 Q. Has anything that you've received over the
4 course of the time since you prepared this report
5 changed your opinion with respect to this matter?

6 A. No, it has not.

7 Q. Is there a place where you have a listing of the
8 documents that you've reviewed?

9 A. Everything that I have reviewed has been sent to
10 you in an update.

11 Q. Would you like me to repeat my question?

12 A. No.

13 MR. LINVILLE: Object to the form.

14 Q. Well I'll -- I'll ask it again. Is there a
15 place where you have kept a listing of the documents
16 that you have reviewed?

17 A. That I myself wrote in my own hand?

18 Q. I don't care whose hand it is. Is there a place
19 in which you have kept a listing of the documents
20 that you have reviewed?

21 A. There is a record of every document I have
22 reviewed.

23 Q. And what is the form of that record?

24 A. Handwritten as they were given to me, and then
25 translated into a list to send to you.

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1 Q. Well the list to send to me, are you referring
2 to Exhibit II-A to your deposition --

3 A. I'm referring --

4 MR. LINVILLE: And to the supplemental.

5 Q. -- and to your report?

6 A. I'm referring to that and the supplement.

7 Q. And that's the only place that you made any
8 list --

9 A. Uh-huh.

10 Q. -- of what you reviewed?

11 THE REPORTER: Your answer?

12 THE WITNESS: Yes. I'm sorry.

13 Q. Where did you stay when you were in New York, by
14 the way?

15 A. Sheraton, I think.

16 Q. During these meetings that you held in New York,
17 were there any lawyers from Minnesota there?

18 A. No.

19 Q. Have there been other meetings in New York about
20 this case?

21 A. Not that I've seen.

22 Q. The meetings that you attended further were
23 conducted in Louisiana; is that right?

24 A. Uh-huh. Yes.

25 Q. And how many such meetings were there and when

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1 did they take place?

2 A. One in September -- one or two in September, I

3 can't remember which, and in -- this is

4 November. This month.

5 Q. All right. The meetings in September, how long

6 did they last?

7 A. They varied. I mean they were mostly "Here are

8 more documents." They were not lengthy.

9 Q. Someone came to Louisiana to deliver you more

10 documents; is that what you're saying?

11 A. Yes. And then there were discussions in --

12 There were some discussions, but the discussions

13 were not the -- the -- the --

14 It's not like there was a three-day meeting and

15 nothing like discussions or anything like that.

16 Q. Well how long were the meetings? Can you not

17 tell me that?

18 A. They would vary in length because I was -- these

19 had to take place in between my teaching schedule, so

20 it wasn't like there was ever any lengthy period of

21 time. Probably an hour or two, and perhaps some days

22 that I didn't teach it would be longer than that, but

23 it was -- it was --

24 I was jostling my time as it was, so -- so there

25 would be a meeting for perhaps an hour or two hours

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1 and I would go back to work.

2 Q. Okay. Were there two separate times that you
3 met in September?

4 A. I believe that's correct. I'd have to go back
5 and look at my calendar.

6 Q. And on each of those occasions, was counsel in
7 New Orleans for more than one day to meet with you?

8 A. Yes.

9 Q. How many days?

10 A. Two or three I would say.

11 Q. And are you saying that there were only a couple
12 of hours in each of those days that they met with
13 you?

14 A. They varied. Much of the time spent while
15 counsel was there I was not with counsel, I was
16 taking documents and reading them, even at home with
17 me at night, but not meeting with counsel doing that.

18 Q. Are you able to estimate for me how many hours
19 during those two visits you met with counsel?

20 A. I can't remember how many days counsel was
21 there. I cannot remember how many days counsel was
22 there, and so I don't know what to --

23 Less than 40 hours, I mean I can start from
24 there, but I don't know -- I mean it has -- has to be
25 less than that, but I -- I don't know how to

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1 answer --

2 I don't remember how many days counsel was

3 there.

4 Q. Well does the number of days -- do you need to

5 know that in order to estimate how many hours you met

6 with them?

7 A. Yes, because that's how I'm calculating. I'm

8 trying to remember how many days.

9 Q. All right.

10 A. You know, days --

11 Q. All right. So you cannot be any more --

12 Are you saying somewhere between zero and 40

13 hours you met with counsel, or are you saying

14 approximately 40 hours?

15 A. I'm saying that it could possibly have been as

16 much as 40 hours at the maximum. No, it wasn't zero,

17 but I -- the only -- you've asked --

18 I can't give you a true number, I don't know,

19 and the only thing I can do is approximate.

20 Q. I've asked you for an approximation.

21 A. And that's best I can give you.

22 Q. All right. Are you saying close to 40 hours

23 then?

24 A. I'm saying I believe that's the maximum it could

25 have been.

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1 Q. Well I think you can understand that when you
2 say "maximum," I'm entitled to know something about
3 what you consider to be the minimum. What do you
4 consider to be the minimum if 40 is the maximum?

5 A. Twenty.

6 Q. Okay. So the closest you are able to estimate,
7 based upon an experience that you had in September of
8 this year, is 20 to 40 hours, in that range; is that
9 what you're saying?

10 A. That's correct.

11 MR. LINVILLE: Counsel, we're -- we're at
12 about an hour here, so when you come to a logical --

13 MR. McKENNA: Yes, let's take a short
14 break, please.

15 (Recess taken.)

16 BY MR. McKENNA:

17 Q. So we've now discussed the conferences that you
18 had with counsel in September in Louisiana.
19 Thereafter, what was the next thing that you did on
20 this case? Was that the meetings in November?

21 A. Let's see. Well I read documents, but --
22 Yes. Basically, yes.

23 Q. And as documents came in -- as you said, seemed
24 like daily -- you would try to review them when your
25 circumstances permitted; correct?

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- 1 A. Yes.
- 2 Q. Right along, instead of waiting for the November
- 3 meeting.
- 4 A. No. Basically between those two meetings,
- 5 during that period of time I had Russians.
- 6 Q. I see. So folks visiting here as a part of this
- 7 program that you talked about?
- 8 A. Yes.
- 9 Q. Okay. So your time was limited that you could
- 10 devote to this until the November meetings; correct?
- 11 A. Correct, because I --
- 12 Correct.
- 13 Q. And where did the November meetings take place?
- 14 Also in Louisiana, in New Orleans?
- 15 A. Yes.
- 16 Q. And for how many days?
- 17 A. Basically about three days in one week and two
- 18 days -- maybe an hour in a third day of the second
- 19 week. But now that --
- 20 You have to take into consideration that's in
- 21 between my teaching and committee meetings and all
- 22 this kind of stuff, so it's not -- I mean it's not a
- 23 day or a day; parts of days.
- 24 Q. And was one of those periods of time this week?
- 25 A. Yes.

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1 Q. If you take the first meeting in November,
2 approximately how many hours did you spend with
3 counsel at that time?

4 A. Oh, gee. I can only give you an estimate: it's
5 less than 20.

6 Q. All right. And once again, as you know from our
7 prior interchange, I'm going to ask you to focus more
8 than that. You're not saying --

9 Are you saying close to 20 or close to zero,
10 recognizing, of course, that it's not zero?

11 A. Closer to 20 than to zero.

12 Q. All right.

13 A. I can't give you --

14 Q. All right. Then this week in preparation for
15 your testimony here the last couple of days,
16 attorneys came down to Louisiana to help you prepare
17 for this experience; is that true?

18 MR. LINVILLE: Object to the form.

19 A. Attorneys came to Louisiana, that's correct.

20 Q. Now are you omitting the latter part of my
21 question because you don't agree that they came to
22 help you prepare for your testimony?

23 A. I omitted it because it's not the sole reason
24 they came. It was to continue with everything else.

25 Q. It was to continue to prepare you with respect

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1 to what had transpired in the case and to prepare you
2 for the deposition; is that true?

3 A. As they continued to prepare for trial, yes.

4 Q. Have there been any other times when you've met
5 with counsel with respect to this case?

6 A. No. I spoke with counsel in October, but that's
7 when I got sick, and I did not meet with counsel nor
8 even discuss anything about the case.

9 Q. Since the time that you prepared the report,
10 which is before you as Exhibit 4848, have you
11 consulted other public sources aside from those
12 listed in Appendix II-B to your report?

13 A. No.

14 Q. And since that time have you consulted with
15 anyone --

16 MR. LINVILLE: Were you finished?

17 MR. McKENNA: Have you got something to add
18 to your answer?

19 MR. LINVILLE: Were you finished with your
20 answer?

21 THE WITNESS: No.

22 A. I have read in preparation for class, but not in
23 any -- thinking about this. I mean --

24 Q. All right. Then have you talked to anybody in
25 Minnesota, aside from counsel, with respect to this

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1 matter?

2 A. No.

3 Q. So is it fair to say that except for lawyers and
4 reviewing depositions and documents that have been
5 produced here, you have not done any -- made any
6 contact with anybody in Minnesota with respect to the
7 subject matter of your testimony?

8 A. That's correct.

9 Q. You also --

10 You still have in front of you the copy of the
11 order, which is Exhibit 4846, and I direct your
12 attention back to page seven.

13 Have you provided to counsel --

14 A. You mean this?

15 Q. I'm sorry, I misspoke. It's 4847, not 4846.

16 Page seven of it.

17 A. Okay.

18 Q. Have you --

19 Have we discussed here all of the times when you
20 have given testimony by deposition at legislative or
21 administrative hearings or at trial? You told us
22 about one deposition in connection with the
23 Tishomingo nursing home; right? Anything else?

24 A. Where I testified myself?

25 Q. Yes. Yes.

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1 A. Well other than the divorce proceeding.

2 Q. Your own?

3 A. My own.

4 Q. All right. Anything else?

5 A. I don't remember any other testimony.

6 Q. And you notice that paragraph e) requires "a
7 listing of all principal treatises, articles, or
8 documents relied upon by the expert in support of his
9 or her opinion." And those treatises and articles or
10 documents are the documents generated in this case
11 and the public sources that you cite in your report;
12 is that true?

13 A. Yes.

14 Q. And paragraph f) requires "all notes,
15 handwritings, calculations or other documents of any
16 kind or nature existing at the time of the service of
17 the expert's signed report prepared in whole or in
18 part for this matter by the expert or by others at
19 his request."

20 Is it true that there are no such things except
21 for your handwritten notes upon the depositions and
22 documents that you reviewed while you were in New
23 York?

24 A. That's true.

25 Q. But you have not produced those; is that true?

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1 A. No, I have not.

2 Q. But it is true that some, at least, of those
3 documents do contain your handwritten notes and
4 marginalia made prior to preparing your report; is
5 that right?

6 A. I cannot remember if I made notations on those
7 in New York or after I got back and reread them, but
8 all the notes I have made are on those documents.

9 Q. Has counsel ever asked you to provide to him all
10 notes, handwritings, calculations or other documents
11 of any kind or nature existing at the time of the
12 service of your report, all of the things that are
13 listed in paragraph f) -- or subparagraph f) of
14 paragraph A.1. of this order?

15 A. I remember counsel saying in New York -- asking
16 me if I had any handwritten notes, like set of notes,
17 and I said no because I didn't. And that's what I
18 assumed he was talking about, and so I didn't give
19 him anything because I didn't have any.

20 Q. Tell me what kind of marginalia or notes that
21 you would make. Would you make --

22 In a deposition, for example, would you make a
23 note on the cover of the deposition, a page number of
24 something you thought was significant?

25 MR. LINVILLE: Object to the form.

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1 A. What I have done systematically is highlight.

2 If there is something that I particularly want to go

3 back to, I have starred with a pen. In some

4 instances I have circled words. Sometimes I have

5 written like a note in the margin of two or three

6 words, I mean not anything of any length, but --

7 That's what I've done.

8 Q. And that would be in the text of the document or

9 deposition; correct?

10 A. Yes.

11 Q. And again, as we discussed a while ago, if you

12 wanted to refresh yourself as to what you thought was

13 important about a particular deposition, it would be

14 necessary for you to page through it looking for your

15 underlines, stars, or marginal notations; is that

16 right?

17 A. (Nodding.)

18 MR. LINVILLE: Object to the form.

19 MR. McKENNA: I think --

20 Did you get the answer?

21 THE REPORTER: I didn't.

22 Q. What is your answer? Is it yes?

23 A. The answer is yes.

24 Q. And have you prepared a supplemental opinion in

25 the matter?

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1 A. No.

2 Q. And are you expecting to do so?

3 A. When I finish completely, when I feel that --

4 that I have had all the time I want to study all the
5 documents, if I feel that I need to supplement the
6 opinion then, I will.

7 Q. At the present time you haven't been asked to;
8 correct?

9 A. No, I have not been asked to.

10 Q. And at the present time you don't have an
11 intention to do it; is that right?

12 A. At the present time I'm still not --

13 I need more time to thoroughly go through all
14 these documents. I have seen nothing yet that would
15 at this moment cause me to change my opinion.

16 Q. Aside from your consultation in the Florida
17 tobacco case, have there been any other occasions
18 when you have consulted as an expert witness in
19 litigation of any kind?

20 A. No.

21 MR. LINVILLE: Object to the form. And I
22 think the testimony was Florida was not as an expert
23 witness.

24 MR. McKENNA: Beg your pardon?

25 MR. LINVILLE: I think the testimony was

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1 that Florida was not as an expert witness. I think
2 you misspoke in the question.

3 Q. Well your testimony or your work in the Florida
4 case was not as a fact witness; was it?

5 A. You mean was I called to testify about facts?

6 Q. No. No. Your work in the Florida case was
7 preparation for possibly giving expert testimony in
8 that case; is that true?

9 A. Initially, but that's not -- it didn't continue
10 that that was the case.

11 Q. Right. The case was disposed of, or you were
12 for some reason -- other reason asked not to
13 continue; is that right?

14 MR. LINVILLE: Object to the form. He
15 doesn't want to know what counsel told you or asked
16 you.

17 Q. I don't want to know what counsel told you or
18 asked you, but you seem to be implying that you were
19 not working in the Florida case as an expert
20 consultant. Is that true?

21 MR. LINVILLE: My only -- my only question
22 and clarification was the testifying expert. I think
23 she -- she --

24 MR. McKENNA: I think it's clear she didn't
25 testify.

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1 MR. LINVILLE: Yes.

2 MR. McKENNA: She made that clear.

3 MR. LINVILLE: Okay. That was my --

4 Q. But the purpose of your consultation was
5 preparation for possibly giving expert testimony and
6 for no other reason; true?

7 MR. LINVILLE: Object to the form.

8 A. Well initially, that's correct.

9 Q. Well what did it become that wasn't that?

10 A. I'm not sure how to answer that.

11 Q. Well are you implying that it did become
12 something other than that?

13 A. I don't know, because I never thought about
14 these terms. I was notified that I would not
15 testify. I continued to do some work, but not to be
16 a testifying -- not to be -- I don't know how to
17 answer this. This is what happened, so --

18 Q. Well are you suggesting that you became a part
19 of counsel's team?

20 A. No. No.

21 Q. Your consultation with them was because of your
22 experience and background with respect to health-law
23 issues?

24 A. That's correct.

25 Q. And were you --

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1 All of the work was done, as in this case, with
2 a view towards studying the existence of fraud in the
3 Medicaid program in Florida.

4 A. That's correct.

5 Q. And you understood that the objective for your
6 study was to determine ultimately whether or not you
7 would be a witness in that case; correct?

8 A. The purpose of my study was to determine whether
9 I would ultimately be a witness?

10 Q. I'm not sure why you're playing cat and mouse
11 with this.

12 MR. LINVILLE: Object to the form. I
13 object to that comment, counsel.

14 A. I don't understand your last question.

15 Q. All right. You have implied that there was
16 something other about your consultation in Florida
17 than preparation to give expert testimony, and I want
18 to know what that was, if there was anything else.
19 If there was nothing else, just say so and we'll move
20 on.

21 A. And I'm telling you I don't know what to -- how
22 to categorize it. I knew that I was not going to
23 testify as an expert witness, but --

24 I still looked at the system --

25 Q. And you still --

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- 1 A. -- after I knew I was not going to testify.
- 2 Q. And you still worked for them, studied the
- 3 matter for them and billed them for the work you
- 4 did.
- 5 A. Yes.
- 6 Q. And gave them advice.
- 7 A. I gave them -- I guess you would call it
- 8 advice. Gave them an analysis.
- 9 Q. And "them" is the defense of the tobacco
- 10 industry in the Florida litigation.
- 11 A. "Them" is --
- 12 "Them" is the attorneys who retained me to do
- 13 it, yes.
- 14 Q. And those attorneys were representing the
- 15 tobacco industry.
- 16 A. That's correct.
- 17 Q. In the course of your work in this, or for that
- 18 matter in the Florida case, did you have contacts
- 19 with other persons who were providing expert
- 20 consultation to the defense?
- 21 A. No.
- 22 Q. Do you personally smoke cigarettes?
- 23 A. Upon a rare occasion.
- 24 Q. And has it ever been something that's more than
- 25 a matter of a rare occasion?

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- 1 A. Yes. I used to smoke.
- 2 Q. When you speak about currently being a person
- 3 who smokes on rare occasions, approximately how often
- 4 does that happen to you?
- 5 A. Oh, quite infrequently, but --
- 6 I mean quite infrequently. Occasionally I
- 7 feel --
- 8 Q. How long ago was it that you quit, except for
- 9 this highly occasional use?
- 10 A. Gee. Approximately nineteen eighty --
- 11 Somewhere around 1983, somewhere thereabouts.
- 12 Q. And did you do that, that is to say, stop
- 13 smoking, except for this highly occasional use, out
- 14 of concern that smoking was hazardous to your health?
- 15 A. I quit smoking because my divorce was over with
- 16 and I was no longer under that -- the stress I was
- 17 under when I was smoking.
- 18 Q. So it wasn't out of a concern for your health;
- 19 correct?
- 20 A. Basically I told you why.
- 21 Q. Do you believe that cigarette smoking is
- 22 hazardous to your health?
- 23 A. Yes, I do.
- 24 Q. And what particular aspects of one's health do
- 25 you believe can be adversely impacted by smoking?

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- 1 A. I suppose your lungs and cardiovascular system.
- 2 Q. Do you understand that cigarette smoking has
- 3 been linked causally to the incidence -- high
- 4 incidence of lung cancer in this country?
- 5 A. Yes.
- 6 Q. And same with respect to heart disease?
- 7 A. Yes.
- 8 Q. Stroke?
- 9 A. Yes.
- 10 Q. And respiratory difficulties?
- 11 A. Yes.
- 12 Q. And you believe that those things are true.
- 13 A. Yes.
- 14 Q. Have you ever had occasion to look into the
- 15 matter any further to form an opinion as to the
- 16 likelihood that a smoker will suffer one or more of
- 17 those diseases?
- 18 A. Not that I -- not that I recall specifically,
- 19 no. I mean --
- 20 Q. Do you believe that nicotine is addictive?
- 21 A. Yes.
- 22 Q. Notwithstanding your own belief that cigarette
- 23 smoking is hazardous to your health, do you
- 24 understand that there has been a debate in the public
- 25 in which the tobacco industry and others contend that

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1 there is no proof that smoking is hazardous to your
2 health?

3 A. Yes, I understand that there's been that debate.

4 Q. Do you think it's reasonable for a citizen in
5 Minnesota to believe that it's uncertain as to
6 whether a scientific causal link has been drawn
7 between smoking and certain diseases?

8 A. I don't think I can speak for a citizen of
9 Minnesota.

10 Q. Is there something about citizens of Minnesota
11 that would be different from citizens elsewhere in
12 your mind in that respect?

13 A. No.

14 Q. Do you believe that it would be reasonable for a
15 person who is familiar with this public debate that
16 we've alluded to to believe that it's uncertain as to
17 whether a scientific causal link has been drawn
18 between smoking and certain diseases?

19 A. I -- I think each individual has to draw his own
20 conclusion.

21 Q. I understand that. I'm just asking you whether
22 you think it's reasonable for a person to, because of
23 this debate, to believe that it's uncertain as to
24 whether this causal link has been drawn between
25 smoking and certain diseases.

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1 MR. LINVILLE: Object to the form.

2 A. And I repeat, I think each individual has to
3 make that determination.

4 Q. And have to make that determination based upon
5 the public debate about the issue; true?

6 MR. LINVILLE: Object to the form.

7 A. I don't know how many people are even aware of
8 the facts that are going on in the public debate.

9 Q. All right. But those who are aware of them have
10 to make a decision based upon the contention of the
11 tobacco industry and others that it's uncertain that
12 this causal link exists on the one hand, and the
13 Surgeon General and others on the other hand
14 suggesting that the link is there.

15 MR. LINVILLE: Object to the form.

16 Q. Individuals have to weigh that; true?

17 A. If individuals want to even consider the debate,
18 and I'm not sure that all individuals do.

19 Q. Then they have to weigh those things.

20 MR. LINVILLE: Object to the form.

21 A. Wait. Are you asking me, if an individual is
22 going to think about this issue, then that individual
23 has to weigh the factors that are in this debate?

24 Q. Well, you said individuals have to make up their
25 own mind as to whether or not there is this causal

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1 link between disease and smoking; correct?

2 A. Yes.

3 Q. And in doing so, it would be reasonable for them
4 to listen to and to believe one side or the other in
5 this debate; isn't that true?

6 MR. LINVILLE: Object to the form of the
7 question.

8 A. I don't know. I think some individuals will
9 ignore both sides and make up their own mind.

10 Q. I understand.

11 A. So I'm not --

12 Q. I just want to know what you meant when you said
13 that individuals have to decide this for themselves.
14 Isn't that what you meant, is that individuals would
15 have to listen to both sides of this debate and make
16 up their mind based upon which of them they believe?

17 MR. LINVILLE: Object to the form.

18 A. I believe there are a lot of individuals that
19 don't listen to anybody; they just make up their own
20 mind.

21 Q. Do you want me to read my question back?

22 A. No. I'm giving you the same answer because
23 that's what I think.

24 Q. Then tell us what you meant when you said that
25 individuals have to make up their mind for themselves

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1 about this.

2 MR. LINVILLE: Object to the form.

3 A. An individual has to make up his own mind as to
4 whether to smoke or not.

5 Q. My question is: Do you believe it is reasonable
6 for an individual in this culture, be it, he or she,
7 a Minnesota resident or not, to believe that it's
8 uncertain as to whether a scientific causal link has
9 been drawn between smoking and certain diseases?

10 A. I don't know that I'm in a position to make that
11 determination.

12 Q. You think that's an open question?

13 MR. LINVILLE: Object to the form. Does
14 she think what's an open question?

15 Q. Do you understand the question?

16 A. I understand that I've given you the answer.

17 Q. Well I don't think that's so, but I --

18 Do you understand the question? Whether or not
19 you want to answer is a different matter.

20 MR. LINVILLE: I would object to that
21 comment.

22 MR. McKENNA: I understand you do.

23 A. My belief is an individual has to make up his or
24 her own mind, using whatever information he or she
25 chooses. So I'm not going to speak for someone else,

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1 I'll speak --

2 I can't.

3 Q. You don't think the issue is a closed issue with
4 respect to the causal relation between tobacco and
5 certain diseases.

6 MR. LINVILLE: Object to the form.

7 A. What I think doesn't matter as far as other
8 people making up their own mind.

9 Q. With all respect, ma'am, I'm entitled to ask you
10 what it is that you think, and if you don't want to
11 answer that, then perhaps we'll come back another day
12 and have you answer it.

13 Do you want to have the question read back to
14 you?

15 A. Yes, please.

16 MR. LINVILLE: Counsel, I object to that.
17 This witness has answered very directly to the
18 question you asked about her personal belief.

19 MR. McKENNA: Oh, that's nonsense. She has
20 not. Now you can note your objection all you want
21 to, but if you're going to make a speech about it,
22 I'll make the counter-speech.

23 MR. LINVILLE: Counsel, I'm objecting to
24 your speech. You made the speech here.

25 MR. McKENNA: All right. Let me see if I

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1 can't wrap all of this up.

2 BY MR. McKENNA:

3 Q. Individuals have to make up their own mind about
4 smoking; correct?

5 A. Correct.

6 Q. And in doing so they can rightfully listen to
7 the public debate about this subject, consisting of
8 the tobacco industry and others on one hand saying
9 that the scientific causal link has not been proven
10 between tobacco and illness, and the Surgeon General
11 and others on the other hand saying it certainly has;
12 is that true?

13 MR. LINVILLE: Object to the form.

14 A. It is true that they can rely on that if they
15 want to.

16 Q. Okay.

17 A. That they can rely on both sides of the debate,
18 if I understand the question, yes.

19 Q. In your preparation to give testimony in this
20 case, did you review any documents that were produced
21 by the tobacco industry about their practices and
22 beliefs?

23 A. The only thing I think I've seen produced is --
24 by the -- by the tobacco industry generically are --
25 under the umbrella, is the opinions. That's all I

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1 remember seeing at the moment, the -- the damage
2 model.

3 Q. You told me yesterday that you had seen the
4 amended complaint in this case. Had you seen that in
5 Louisiana before going to New York the first time to
6 consult on this case?

7 A. I don't remember.

8 Q. When you did read the complaint before giving
9 your opinion, did you make any notations on it?

10 A. I don't think I did.

11 Q. Have you ever made any notations on it?

12 A. I would have to go back and look at it. I don't
13 believe I did. I don't believe there are any
14 notations on the complaint. I will -- I will go back
15 and look, but I don't remember doing any.

16 Q. While you were working at the Medicaid Fraud
17 Control Unit in Mississippi, was there a SURS unit in
18 the state of Mississippi?

19 A. There was a computer unit, yes, surveillance
20 unit from which we got information about claims that
21 were rejected, et cetera.

22 Q. Do you have any more detail for me about the
23 staffing of that unit? How many people?

24 A. I don't remember the staffing, I just remember
25 the reports.

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1 Q. And what form did the reports take when they
2 came to you?

3 A. Quite often what we were given to look at were
4 computer printouts of provider/recipient/service
5 provided data.

6 Q. What about that?

7 A. What provider provided what service to what
8 recipients, and usually how much was paid, that type
9 of information.

10 Q. Well, I mean, are you saying that there was
11 nothing more pointed about it than that, that a
12 provider provided a service of a certain kind to a
13 recipient and received a certain amount of money,
14 that's all there was to it?

15 A. No. There were --

16 That's the data that were on these things, on
17 the report, on the computer printouts. There
18 were --

19 Then you have reports of whether this particular
20 provider, for example, was, for example, an outlier.
21 Was this material -- this report, did it show excess
22 activity in a particular area, for example, in
23 services provided, et cetera. Lots of times what was
24 provided to us was what we asked for.

25 Q. But some things were provided to you routinely?

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1 A. We got reports from Program Integrity.

2 Q. From whom?

3 A. Program Integrity in Medicaid.

4 Q. In Medicaid? That was a state unit in Medicaid?

5 A. I don't remember if that was considered a

6 division of --

7 I have to go back and look at the organizational
8 charts, what it actually said. But yes, that's who
9 would send complaints to us. And if we needed, for
10 example, cost reports, copies of cost reports or
11 whatever to review, we requested it from Program
12 Integrity.

13 Q. You said you don't remember how many people were
14 in SURS. Do you remember the names of any of the
15 people in the SURS unit in Mississippi while you were
16 at the Attorney General's office?

17 A. No.

18 Q. Did you ever meet any of those people
19 face-to-face?

20 A. I don't remember.

21 Q. Do you know where they were located?

22 A. I don't remember.

23 Q. What was the title of that organization?

24 A. Well we always talked about Program Integrity
25 and utilization stuff. I don't remember what the

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1 exact title was.

2 Q. But Program Integrity and utilization, was that
3 the same as the SURS unit?

4 A. I think they were not the same thing. I cannot
5 remember who produced which data to us.

6 (Discussion off the record.)

7 A. I do not remember where they sat physically. I
8 just don't remember.

9 Q. Do you remember for sure whether there was a
10 separate unit, a separate SURS unit from this Program
11 Integrity and utilization function that you
12 described?

13 A. I remember discussions about the computer
14 systems, what they did, what types of things that
15 they would kick out. I don't remember as we sit here
16 where they sat.

17 Q. Okay. Not where they sat, my question is: Do
18 you believe it was a separate organization, the SURS
19 unit?

20 A. I cannot remember if SURS was a separate unit,
21 completely separate from Program Integrity or not.

22 Q. And you can't remember any individuals that were
23 associated with either one of those functions; is
24 that true?

25 A. No, as we sit here today, I don't recall the

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1 names.

2 Q. Okay. Do you have a recollection whether you
3 can recall the name or not of -- of dealing
4 face-to-face with any person from either one of those
5 organizations from Mississippi SURS or from Program
6 Integrity and utilization?

7 MR. LINVILLE: Object to the form.

8 A. Yes, I dealt on a face-to-face basis with
9 Program Integrity, for example, particularly when I
10 requested cost reports, et cetera, to review.

11 Q. And when you dealt face-to-face with them, was
12 that a matter of them -- you'd call up and request
13 something and then they would produce it and you'd
14 look at it, or did you have conversations and
15 consultations with them? What happened?

16 A. I requested documents that I would like to look
17 at; for example, cost reports.

18 Q. Okay. Cost reports with respect to a specific
19 subject?

20 A. Well, for example, on one occasion it was a
21 review of cost reports of nursing homes.

22 Q. Of all nursing homes?

23 A. No, not all nursing homes.

24 Q. You were targeting somebody at the time and you
25 asked for data having to do with the subject of your

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1 investigation; is that true?

2 A. Yes.

3 Q. Did you ever review for any reason the
4 functioning of the SURS or the Program Integrity and
5 utilization unit in Mississippi to determine what it
6 is that they did and how well they did it?

7 A. We had meetings where we discussed the computer
8 system --

9 Q. All right.

10 A. -- and what it might and might not do, --

11 Q. Okay. What is your --

12 A. -- what you might and might not get.

13 Q. Anything else?

14 A. And, as I say, sat down and reviewed what are
15 computer printouts to see what kind of data would
16 actually show up on them.

17 Q. What did you understand that this unit could do
18 with its computers? What sorts of things could it
19 generate?

20 A. It could -- it could generate the reports I
21 reported to you already. You could ask it --

22 For example, we could request reports of this
23 type, this type, this type. Like what I'm -- how
24 much -- what all has this provider provided, one
25 type, what -- how much -- how many services, et

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1 cetera, has a particular recipient received, it would
2 spit that out. You could ask it to do several
3 things. It would kick out things like
4 over-utilization or look at over -- look at
5 over-utilization. It would kick out if edits were
6 set for a certain thing. But basically, unless there
7 was a pattern, the computer system would not kick
8 out --

9 I mean this was the subject of some of our
10 conversations. If there were not patterns by a
11 provider, for example, they would not be kicked out
12 of the system.

13 Q. What kind of patterns?

14 A. Patterns such as a particular provider providing
15 too many services or a whole lot more services of a
16 particular type of service than his peers, his or her
17 peers. A particular provider we looked at, I believe
18 dollars, what the provider had provided for X amount
19 of time, was a whole lot different from his peers.
20 That type stuff would kick out. Not if -- in
21 addition to mistakes. I mean the computer system
22 will -- will check if on its face a claim is okay,
23 and if there's not something patently wrong with it,
24 that claim will still go through. So even checking
25 for a pattern is -- sometimes even that's after the

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1 fact.

2 Q. My question is: What other kinds of reports
3 could this computer spit out in the Mississippi
4 Program Integrity and utilization? Do you have any
5 recollection of any others?

6 A. That I specifically looked at or talked
7 about? I mean it's my understanding, although I
8 never -- I didn't see them, it could generate reports
9 that had to be --

10 That's all I specifically remember at the
11 moment.

12 Q. Did this unit have analysts who would take what
13 the computer generated as far as these unusual
14 patterns and study them?

15 A. It's my understanding they looked at outliers.

16 Q. And who is the --

17 They had analysts there who looked at outliers,
18 meaning people whose reported experience, according
19 to the computer, was outside the norm; is that what
20 you're talking about?

21 A. That's my assumption. I did not ever see them
22 do it. I did not even ask them if they
23 specifically --

24 Q. Did you know what they mean by "outliers?"

25 A. Do I know what they mean by "outliers?"

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1 Q. Yes.

2 A. Yes.

3 Q. What do they mean by "outliers?"

4 A. It means basically what I was just describing to
5 you, someone who -- a provider, for example, who
6 provides many more services than his peers, or more
7 dollars, or recipients who received more services,
8 that type of thing.

9 Q. Okay. And once they identified some outliers, I
10 take it by means of the computer edits that you have
11 alluded to, what did they do with that list of
12 outliers?

13 A. I don't know what all they did with the list of
14 outliers.

15 Q. Any other work they did that you know of?

16 A. No. Basically what I was concerned with was
17 what we discussed.

18 Q. As far as your use of this unit when you were in
19 the Mississippi Attorney General's office, your
20 primary use of it was to ask them for information
21 about a specific recipient or a specific provider;
22 correct?

23 MR. LINVILLE: Object to the form.

24 A. Yes. If I made a request, it was primarily for
25 a specific -- that's correct, a specific provider or

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1 specific recipient.

2 Q. At any time while --

3 A. Or services.

4 Q. -- you were --

5 MR. LINVILLE: I'm sorry. Were you
6 finished?

7 A. Or services provided. I mean --

8 Q. At any time when you were in the Mississippi
9 Attorney General's office, did someone from this unit
10 come to you and say, "We've analyzed this provider
11 who's an outlier and he does 10 times what other
12 people do in this area," and provide you with any
13 follow-up data with respect to that person, and ask
14 you to do something?

15 A. I don't remember if anyone came to me directly.

16 Q. Do you know whether or not, once they generated
17 these outlier reports, whether they did any further
18 audits of these people?

19 A. I don't remember whether they did audits or
20 not. I mean it's not something I questioned them
21 about.

22 Q. Was this unit the source of any of the cases
23 that you prosecuted or investigated while you were at
24 that office?

25 A. The Program Integrity asked us to look at some

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1 cases. Now -- but I can't tell you specifics.
2 Program Integrity did. I don't know if that came --
3 what the particular route was, but we did get some
4 requests from Program Integrity.
5 Q. Some requests to look at cases, meaning what?
6 What kind of look at those cases would you do? Would
7 you investigate them somehow?
8 A. Yes. You would -- you would order records to
9 try to figure out what actually happened.
10 Q. So they would come to you basically with a --
11 They would come to you with a computer-generated
12 report that indicated that somebody was an outlier
13 and suspect, and that you're supposed to do the
14 investigation from there, including ordering the
15 records; is that right?
16 A. Primarily it would come to us if they thought it
17 was fraud.
18 Q. All right. My point is: How far along would it
19 be when it came to you and what kind of investigation
20 would your people do?
21 You would order the medical records. Is that
22 what you said?
23 A. Quite often, yes, we did go and --
24 Again, as I say, by the time they referred to
25 us, they were considered to be a fraud case, and so

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1 we were looking at --

2 Yes, we would do our own investigation.

3 Q. Okay. But had they already ordered the medical
4 records and analyzed them by the time they came to
5 you?

6 A. I don't remember whether they had or not. I
7 mean we would have done our own investigation
8 regardless.

9 Q. You mean you'd go back and redo the
10 investigation they did? If they'd ordered the
11 records and looked at them, you would do it all over
12 again?

13 MR. LINVILLE: Object to the form.

14 A. We would send investigators --

15 Q. To do what?

16 A. -- to facilities to find out -- to check with
17 recipients and to check with -- to check for records,
18 perhaps medical records, obviously. Quite often we
19 would ask to see the full medical record, which
20 might --

21 Q. To see what?

22 A. The full medical record, which perhaps had not
23 been looked at before, but --

24 By the time it would come to us, I mean we
25 treated it as a fraud, as a fraud case, not as

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1 anything else, so that was our concern.

2 Q. You indicated that you would do your own
3 investigation regardless. Does that mean that you
4 didn't feel that you could rely upon the
5 investigation that had been done by this other unit?

6 MR. LINVILLE: Object to the form.

7 A. Different people investigate things in different
8 ways depending upon what it is they're investigating
9 and how they're trained. We were a criminal unit
10 primarily, although we did civil, but our
11 investigators were trained to do criminal
12 investigations, and that's what we were
13 investigating, and therefore that's how we would
14 approach it. And if we --

15 Whatever we needed to do, we did.

16 Q. Okay. And I'm trying to find out what it is you
17 did. Have you described the things that your
18 investigators would do?

19 A. Our investigators would look --

20 It depended upon the case. They would, for
21 example, interview recipients, if needed.

22 Q. The SURS unit or the Program Integrity --

23 A. I'm talking about ours.

24 Q. I understand that. My -- my question is: The
25 Program Integrity unit or the SURS unit, whichever

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1 unit it was that brought you this case, hadn't talked
2 to recipients? They didn't do that?

3 MR. LINVILLE: Object to the form.

4 A. I don't remember.

5 Q. You don't remember. Okay.

6 Do you have any recollection of approximately
7 what percentage of volume of cases in your unit at
8 the Attorney General's office might have come from
9 the SURS or Program Integrity and utilization unit?
10 A. No. I would have to go back and look at the --
11 at the reports.

12 Q. At the time that you were at Mississippi, was
13 the term "SURS" something that you were familiar
14 with?

15 A. That's a term I heard, but I'm not sure that we
16 actually called the unit that name at the time. I
17 simply don't remember that. I mean we're talking
18 about the computer system, but --

19 Q. Do I understand your conclusion correctly that
20 you are unable to estimate a percentage of
21 expenditures in the Minnesota Medicaid program which
22 are diverted by fraud and abuse beyond saying that it
23 is a substantial amount?

24 A. I believe it's substantial, yes. And I believe
25 that, from what I've seen so far anyway, I have

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1 nothing to lead me to believe it's less than what has
2 been projected in different studies that have been
3 done nationally.

4 Q. And those national studies, as you understand
5 them, project what percentage of expenditures are
6 diverted by fraud and abuse?

7 A. We see studies that talk about expenditures in
8 the different health payment systems in the United
9 States that are made which shouldn't be made or
10 should not have been made. The base -- the bottom
11 figure that you normally see is 10 percent. One of
12 the latest studies from the OIG says that, I believe,
13 the number of payments that were erroneous or should
14 not have been paid, somewhere around 14 percent. I
15 have to go back and look at the actual study.

16 Q. Let me try my question again. I want to come
17 back to what you just said about OIG.

18 The national studies that you are alluding to
19 project what percentage of expenditures in the
20 Medicaid fraud and abuse -- or in the Medicaid
21 program being diverted by fraud and abuse?

22 A. Most studies will give you an indication that no
23 matter which payment system you see, the belief is
24 that it's at least 10 percent.

25 Q. All right. So "no matter which system," what

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1 you mean, you're -- you're including Medicaid,
2 Medicare, private health organizations such as Blue
3 Cross Blue Shield, everybody; is that what you're
4 saying?

5 A. Yes. I'm saying that many of these reports lump
6 it all together, and there's no reason to believe
7 that there's a big difference between the systems.

8 Q. Your sense, then, of the literature and the
9 expertise that you have studied is that no matter
10 what kind of system you have, and therefore, I
11 presume, no matter what kind of preventive programs
12 you have, you're going to have 10 percent fraud and
13 abuse; correct?

14 MR. LINVILLE: Object to the form.

15 A. No, that's not what I said.

16 Q. Well --

17 A. Or at least that's not what I meant to say.

18 Q. All right. What did you mean to say?

19 A. I mean to say that reports that have looked at
20 our systems as they are constructed, Medicare,
21 Medicaid being two of them, and if you have a system
22 that functions very much in the same way as far as
23 payments go, then quite often -- almost all the
24 studies, I believe, say somewhere around 10 percent.
25 Now if it's --

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1 I'm not testifying to any kind of system that's
2 different. But if they're basically designed much
3 the same way, then I'm saying that 10 percent is -- I
4 believe to be a bottom-line figure.

5 Q. Now I guess I don't understand what it is that
6 you're saying. I thought you were telling me that
7 your sense was that no matter what kind of
8 health-care delivery and payment system, there was
9 going to be a minimum of 10 percent fraud and abuse
10 in it.

11 MR. LINVILLE: Object to form.

12 Q. Did I misunderstand that?

13 A. You misunderstood it.

14 Q. Okay. So are you saying that only Medicaid has
15 10 percent fraud and abuse?

16 A. No.

17 Q. And what other kinds of systems have 10 percent
18 fraud and abuse as a matter of course?

19 MR. LINVILLE: Object to the form.

20 A. Medicare.

21 Q. All right.

22 A. If it is a health-care payment system that is
23 set up very much like Medicare and Medicaid where
24 payment claims are reviewed on a post-payment basis
25 for the most part, for example, then it's going to

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1 be, I believe -- I agree with the studies that say --
2 I've seen nothing to make me believe any
3 different, that it's not going to be true that
4 erroneous payments are made at a level lower than
5 what the reports are telling us.

6 Q. Now I think that I'm going to ask you to tighten
7 up your focus a little bit. And you understand that
8 we're not here concerned about erroneous payments but
9 about fraud and abuse.

10 MR. LINVILLE: Object to the form.

11 Q. Do you understand that?

12 A. No. That's not what I was asked to look at.

13 Q. Okay. You were asked to look at the percentage
14 of the Minnesota Medicaid expenditures and those for
15 Blue Cross and Blue Shield and for general assistance
16 medical coverage in Minnesota that were erroneous,
17 not those that were a matter of fraud and abuse?

18 A. I was asked to look at payments that should not
19 have been made, including fraud and abuse.

20 Q. All right. And you weren't asked to separate
21 out those that were made by mistake from those that
22 were the subject of fraud and abuse; is that true?

23 A. Ultimately I've been asked to look at claims
24 that have been made erroneously, I mean -- and to try
25 and figure out if that is substantial.

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1 Q. Where in your report do you allude to an opinion
2 with respect to erroneous payments as opposed to
3 fraud and abuse?

4 MR. LINVILLE: Would you like her to go
5 through that now, counsel, page by page? Your
6 question covers all of a -- of a -- of a -- of a
7 lengthy report.

8 MR. McKENNA: Yeah, let's do it. Let's get
9 going here.

10 Q. Show me where you talk about erroneous
11 payments. Show me where you describe your opinion in
12 those terms as opposed to fraud and abuse.

13 Or isn't it true that you testify in your report
14 about fraud and abuse, the extent of fraud and abuse
15 in health programs, fraud and abuse detection and
16 enforcement efforts in the Minnesota Medicaid
17 program, fraud and abuse detection and enforcement
18 efforts in GAMC, fraud and abuse detection methods in
19 Blue Cross Blue Shield of Minnesota, isn't that what
20 your report -- report addresses?

21 MR. LINVILLE: I object to the form,
22 counsel. The report says what it says. You have
23 it. We have it. Anybody can look at it.

24 Q. All right. I -- let me --

25 Let me try this to make sure I understand what

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1 you're saying. Your opinions here have to do with
2 the broad universe of payments which shouldn't have
3 been made, and you include with them those which were
4 made pursuant to clerical errors as well as those
5 made pursuant to fraud and abuse; is that right?

6 A. Ultimately I will, yes.

7 Q. Well, I mean is that what's addressed in your
8 report? Do you not know what the general subject
9 matter of your report is?

10 A. Yes, I know.

11 Q. And is it that you address in your report the
12 broad universe of payments which shouldn't have been
13 made, including those made by clerical error and
14 those made pursuant to fraud and deceit?

15 MR. LINVILLE: I'm going to object to this,
16 counsel. If you have a specific reference in the
17 report, I think you should -- you should refer her to
18 that.

19 Q. Do you have the question in mind?

20 A. I have written a report which I'm at liberty to
21 amend when I get through with my study, when I'm
22 completely through.

23 MR. LINVILLE: Incidentally, it's two hours
24 and five minutes. You know, I'm concerned about a
25 break time.

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1 MR. McKENNA: Yes. And maybe we can use a
2 bit of a break time. I won't ask her to do that off
3 the record. We'll be back in a few minutes then.

4 (Recess taken.)

5 BY MR. McKENNA:

6 Q. Ms. Overall, please turn to your report, page
7 three, the first paragraph under the heading of
8 "Topics Covered in this Report." Please read the
9 first full paragraph to yourself. You don't need to
10 read it out loud.

11 A. Okay.

12 Q. Have you had a chance now to read to yourself
13 the first full paragraph on page three of your
14 report?

15 A. Yes.

16 Q. And does that refresh your recollection as to
17 whether your report addresses the question of, first
18 of all, general characteristics of the Medicaid
19 program and of the General Assistance Medical Care
20 program on the one hand, and fraud and abuse on the
21 other?

22 A. Yes.

23 Q. And your report does not address the broader
24 universe of payments which should not have been made
25 as you said earlier; does it?

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1 A. I'll have to go through this report, but there
2 are places in it, if I -- I will have to find them,
3 where I have used the term "inappropriate payments,"
4 and that's why I -- that's the universe that --
5 that -- fraud abuse, yes, or inappropriate payments.
6 And I think I have mentioned in this report
7 inappropriate payments in explaining.

8 Q. Let me -- let me start again. Is it correct
9 that you understand your mission here is to provide
10 testimony as to the extent to which Minnesota
11 Medicaid payments, together with those made by GAMC
12 and Blue Cross Blue Shield, have been diverted
13 because particular payments should not have been
14 made, rather than to limit yourself to fraud and
15 abuse in those programs?

16 A. I am looking at inappropriate payments. Abuse,
17 for example, is not fraud. But payments that are
18 inappropriately made can also be abuse of the system.

19 Q. Let me try my question again. Would you be more
20 comfortable having the reporter read it, or do you
21 want me to restate it, or do you have in mind what my
22 original question was?

23 A. I've lost --

24 MR. LINVILLE: Object.

25 A. I've lost it.

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1 Q. All right. Let me try it again. Is it your --
2 you understand -- strike that.

3 Is it your understanding that what you are
4 supposed to be doing here today as an expert
5 consultant is offering testimony about the extent to
6 which Minnesota Medicaid, GAMC, and Blue Cross Blue
7 Shield have had payments diverted by reason of a
8 broad universe of payments which should not have been
9 made, including clerical errors and mistakes as well
10 as fraud and abuse?

11 A. Yes, because those types of errors can be
12 considered to be an abuse of the system.

13 Q. Well a clerical error is an abuse of the system,
14 is that what you're saying?

15 A. I'm saying that "abuse" is very widely defined.

16 Q. Well define "abuse" for me, please.

17 A. Abuse basically is when a payment is made when
18 it shouldn't have been made, not on the basis of
19 fraudulent intent of the party who received the
20 remuneration or the service. Abuse can be
21 over-utilization, but abuse can be a lot of other
22 things.

23 Q. Including clerical errors, such as simply
24 hitting the wrong key stroke on a computer?

25 A. The system is being abused if there is an

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1 enormous amount of money going out that should not
2 be.

3 Q. Well do you include within "abuse" clerical
4 errors such as hitting the wrong key stroke on a
5 computer?

6 A. It's possible to include it in that, yes.

7 Q. Do you include that, not is it possible. Do you
8 include that?

9 A. Yes.

10 Q. And do you include within the definition of
11 "abuse" the utilization of an incorrect form, for
12 example?

13 A. Anything that can result in payments that should
14 not be paid could be considered an abuse of the
15 system.

16 Q. All right. So when you offer your opinions
17 about the extent of fraud and abuse here, you are
18 including clerical errors and other non-intentional
19 difficulties which lead to payments which shouldn't
20 have been made; is that right?

21 A. Yes.

22 Q. Please turn to page 13. Is this not, in
23 paragraph A., a place where you set forth the
24 definition of fraud and abuse which you purport to
25 utilize throughout your report?

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1 A. It's where I give an example of a definition of
2 fraud and abuse.

3 Q. No, ma'am, that's not my question. Please try
4 to focus on my question.

5 Is this not the place where you set forth the
6 definition of fraud and abuse that you are utilizing
7 in your report?

8 MR. LINVILLE: I object to that question.

9 A. You have to read it within context, and you have
10 to look at the first sentence of the paragraph.

11 Q. I am looking at the entire paragraph.

12 Does this paragraph, paragraph A., set forth the
13 definition of fraud and abuse that you purport to
14 utilize throughout the remainder of your report?

15 A. It gives an example.

16 Q. No, ma'am. My question is does this set forth
17 the definition of fraud and abuse that you purport to
18 use throughout your report? Not an example.

19 MR. LINVILLE: I object to the question.

20 MR. McKENNA: I understand.

21 MR. LINVILLE: The question has been asked
22 and answered three times.

23 MR. McKENNA: Not -- not at all.

24 A. You have to read the first sentence of the
25 paragraph to understand what the rest of the

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1 paragraph says.

2 Q. I am reading the first sentence, I'm reading the
3 entire paragraph, and I want to know whether this
4 paragraph, all of paragraph A. on page 13, sets forth
5 the definition of fraud and abuse that you purport to
6 utilize throughout your report.

7 A. The first sentence of that paragraph
8 discusses --

9 Q. Can you not answer my question "yes" or "no"?

10 A. I am trying to answer your question, counsel.

11 Q. You are not answering my question "yes" or
12 "no." It's a "yes" or "no" question. Can you
13 answer "yes" or "no"?

14 A. No, I cannot. No, I cannot.

15 Q. Okay. Then go ahead and answer in whatever
16 fashion you feel you must.

17 A. In the intro sentence I discuss unwarranted or
18 inappropriate expenditures of health-care dollars,
19 and then I do quote an example of a definition of
20 fraud and abuse. But there are a jillion of them out
21 there.

22 Q. And you're suggesting that you simply picked one
23 at random and not one which you thought was useful
24 and instructive with respect to your report?

25 MR. LINVILLE: Object to the form.

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1 Q. Is that what you're saying?

2 A. I'm saying I cited a definition.

3 Q. You cited a definition which you intended to be
4 relied upon by people who reviewed this report in
5 construing your opinions; did you not?

6 MR. LINVILLE: Object to the form.

7 A. This definition was put in here to try to give
8 whoever reads it an idea of what the difference is
9 between fraud and abuse when you're trying to
10 distinguish abuse from fraud.

11 Q. And what you meant by those terms; true?

12 MR. LINVILLE: Object to the form.

13 A. It meant what I just said.

14 Q. So you are saying that among all the universe of
15 definitions of fraud and abuse, you picked this one,
16 but you are not representing this to be the
17 definition of fraud and abuse that you utilize; is
18 that true?

19 MR. LINVILLE: And by "this," you're
20 referring to the full paragraph?

21 MR. McKENNA: All of paragraph A., right.

22 MR. LINVILLE: All of paragraph A.

23 A. The definition there serves to show the
24 difference between fraud and abuse. There's an
25 intent for fraud that's not required in abuse. Now

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1 all the other things you've asked me about constitute
2 instances in which inappropriate payments are made
3 where there is no intent.

4 Q. Does paragraph A. constitute the definition of
5 fraud and abuse which you intend to be utilized in
6 construing your opinions?

7 MR. LINVILLE: Object to the form.

8 A. It is there to show the difference in fraud and
9 abuse.

10 MR. McKENNA: Please read the question
11 back, Mr. Reporter.

12 (Record read by the court reporter.)

13 MR. LINVILLE: Object to the form.

14 A. It was put there to show the difference in fraud
15 and abuse.

16 Q. Will you not tell me whether or not you intended
17 this definition to be relied upon by people who were
18 construing your opinion?

19 MR. LINVILLE: Object to the form.

20 A. As I say, the first sentence of this paragraph
21 talks about inappropriate expenditures. This is a
22 definition that shows the difference in fraud and
23 abuse.

24 Q. All right. Let me come at it from the other
25 direction then. Are you saying that you did not

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1 intend for people to rely upon this definition of
2 fraud and abuse when construing your opinions?

3 MR. LINVILLE: Object to the form.

4 A. I intend for someone who reads this to be able
5 to tell the difference between fraud and abuse by
6 reading this opinion and what it -- I mean this
7 definition, which shows that abuse -- that fraud
8 requires intent, abuse does not.

9 Q. And this definition is what you intended people
10 to utilize in reading and understanding your report.

11 MR. LINVILLE: Object to the -- to the
12 form.

13 A. I'm telling you what I mean.

14 Q. Well you're not telling me whether you intended
15 people to rely upon this in reading your report. Did
16 you intend for people to rely upon this definition in
17 reading your report?

18 MR. LINVILLE: Object to the form.

19 A. To be able to tell the difference between fraud
20 and abuse, yes.

21 Q. To rely upon it to tell the difference between
22 fraud and abuse. Okay.

23 Now did you define fraud and abuse anywhere else
24 in your report?

25 A. I think this is the only definition I cited.

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1 Q. Did you define fraud and abuse anywhere else in
2 your report, whether you cited a definition or not?

3 A. I think I did not spell out a definition again.

4 Q. Is there a place in your report -- and take all
5 the time you want -- in which you say that erroneous
6 and mistaken payments are to be included within the
7 definition of fraud and abuse?

8 MR. LINVILLE: Are you --

9 Apart from paragraph A. here which you've
10 already referred to?

11 MR. McKENNA: Absolutely. Anywhere in the
12 report. Take all the time you want.

13 A. I have used the term "inappropriate
14 expenditures" in here several times.

15 Q. Show us --

16 Show me where. You can just tell me by page
17 number and I'll find it.

18 A. Bottom of page 15, paragraph at the bottom of
19 page 15.

20 Q. All right. Just give me a moment.

21 Perhaps you can direct me by counting up from
22 the bottom. Where is there a line that says that
23 mistaken payments, including those by clerical
24 errors, are to be included within fraud and abuse?

25 MR. LINVILLE: I object to the form of that

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1 question.

2 Q. Or are you simply saying that you used the words
3 "inappropriate payments" there?

4 A. I used the term "inappropriate payments."

5 Q. All right. But no place on that page is
6 inappropriate payments included -- or defined to
7 include clerical errors, right, or the like?

8 MR. LINVILLE: Object to the form.

9 Q. Is that true?

10 A. It does not say that in words, but an
11 inappropriate payment is an inappropriate payment --

12 Q. Okay.

13 A. -- regardless of the reason.

14 Q. All right. At the top, when you are citing
15 different kinds of fraud and abuse, citing common
16 examples, you don't include anything there with
17 respect to erroneous or mistaken or clerical-error
18 payments; do you?

19 MR. LINVILLE: Object to the form.

20 A. It does not say that, but if someone made a
21 claim, for example, for services that were never
22 performed and it was made by mistake.

23 Q. Okay. Please continue and find the other places
24 where you made reference to mistaken or erroneous
25 payments as being included within fraud and abuse.

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1 A. On page 16 where I'm talking about recovery
2 efforts.

3 Q. And again the use of the term "inappropriate" is
4 what you're referring to?

5 A. Yes, because I'm saying that "enforcement
6 efforts which constitute -- concentrate on seeking
7 recovery of inappropriately paid funds...."

8 Q. All right. But again, "inappropriate" is not
9 defined as including erroneous payments or clerical
10 errors on that page anywhere; is it?

11 A. It is not specifically set out, but if it were
12 paid inappropriately, regardless of fraud or abuse,
13 it's inappropriate.

14 Q. Please go ahead. You say "regardless of fraud
15 and abuse." Is that what you're saying? Did I
16 understand you correctly?

17 A. Regardless of what you are choosing to -- the
18 words you're choosing to use. What I am trying to
19 say to you is we're talking about trying to --
20 recovery of inappropriately paid funds not including
21 funds -- it includes all funds that were paid for
22 claims that were paid inappropriately.

23 Q. I understand that you say that "inappropriate"
24 includes clerical errors and erroneously-made
25 payments. What I want you to do is to tell me where

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1 you specify in some way in your report that clerical
2 errors and erroneously-made payments are included
3 within fraud and abuse.

4 MR. LINVILLE: Object to the form.

5 A. I have used the term "inappropriate payment"
6 again on page 17.

7 Q. All right. Find a place where you use the words
8 "clerical errors" or "mistaken payments" or words to
9 that effect in that connection. I understand that
10 you claim that "inappropriate" does include those
11 terms, and I want to know where that's spelled out.

12 MR. LINVILLE: Object to the form.

13 A. I can only tell you what is there. The term
14 "inappropriate payment" is used several times and it
15 includes inappropriate payments of all types.

16 Q. But there isn't a place where it spells out that
17 "inappropriate payments" does include clerical
18 errors and other innocently-, erroneously-made
19 payments; is that right?

20 MR. LINVILLE: Object to the form.

21 A. I'm saying that can be under the umbrella of
22 abuse.

23 Q. No, ma'am. I want to know whether or not there
24 is a place anyplace in your report where you make it
25 clear that erroneous payments, payments made by

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1 clerical error or on the basis of another innocent
2 explanation, that that is included within fraud and
3 abuse. Do you spell that out anywhere?

4 MR. LINVILLE: Object to the form.

5 A. In my mind it is included.

6 Q. And is it spelled out somewhere in your report?

7 A. My report complete -- consistently talks about
8 inappropriate payments.

9 Q. I understand that. Do you not understand my
10 question?

11 A. Yeah. I understand what an inappropriate
12 payment is --

13 Q. No, ma'am.

14 A. -- and --

15 Q. Do you understand my question?

16 MR. LINVILLE: Excuse me. Please don't
17 interrupt the witness.

18 Q. Do you understand my question? Is there a --

19 I'll try it again. Is there a place in your
20 report where you spell out in some fashion that the
21 term "inappropriate payments" or the term "abuse"
22 includes erroneous payments, mistaken payments, or
23 payments made by clerical error or other innocent
24 explanation, that those are included within the term
25 "abuse?"

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1 MR. LINVILLE: Object to the form.

2 Q. Did you spell that out anywhere?

3 MR. LINVILLE: Object to the form.

4 Q. If so, just tell me and we'll move on.

5 A. I've answered you. I've answered you.

6 Q. Okay. You have not pointed out a place to me
7 where you explain in here that payments made by
8 clerical error, by mistake, are included within fraud
9 and abuse. You're just telling me that that's what
10 you include in your own mind of that definition. Is
11 that a fair statement?

12 MR. LINVILLE: Object to the form.

13 A. No, that's not a fair statement.

14 Q. Then tell me a page/line of your report --

15 MR. LINVILLE: Counsel, --

16 Q. -- where you spell that out.

17 MR. LINVILLE: -- we've just been through
18 that. She's referred you to a whole number of pages
19 and lines.

20 MR. McKENNA: Counsel, she has not done any
21 sort of --

22 You want to go to the court about this? I
23 understand the judge is free right now. If you're
24 contending that she answered the question and that
25 I'm abusing her somehow by pursuing this, let's go.

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1 MR. LINVILLE: I think you are abusing the
2 witness a little bit.

3 Q. Is it in here?

4 A. What is in there is that there --

5 I'm talking about inappropriate payments over
6 and over again. There's a definition in there about
7 fraud and abuse that is there to show the difference
8 between fraud and abuse, and that is the intent
9 required for fraud that's not required for abuse.
10 That's what I'm telling you.

11 Q. A page upon which you allude in any fashion to
12 the inclusion of clerical errors, erroneous/mistaken
13 payments within the definition of abuse, can you cite
14 such thing? If you can't, we'll just move on.

15 MR. LINVILLE: Object to the form.

16 A. I've given you all the answers that I can give
17 you.

18 Q. And you have been as precise as you can be; is
19 that what you're saying?

20 A. Yes.

21 Q. Okay. Now is it your testimony that those who
22 study the subject of fraud and abuse in connection
23 with health-care delivery programs routinely include
24 within their definition of fraud and abuse clerical
25 errors and other payments that were made pursuant to

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1 an innocent mistake?

2 A. When you see --

3 I believe that when you see reports that talk
4 about inappropriate payments, they include all the
5 above.

6 Q. Including payments made erroneously or by an
7 innocent mistake.

8 A. Yes.

9 Q. Okay. Can you think of any -- of a source in
10 which that is spelled out in the definition of what
11 is fraud and abuse?

12 MR. LINVILLE: Object to the form.

13 A. What I think I just said was when you see the
14 term "inappropriate payment" used, it is -- it
15 constitutes everything that is an inappropriate
16 payment of any type, when you see a report talking
17 about inappropriate payments.

18 Q. Do you not understand my question?

19 A. I guess I don't.

20 Q. Okay. Do you recall another source, another
21 expert, another study, another report, which defines
22 fraud and abuse in such a fashion as to include
23 payments made by clerical error or innocent mistake?

24 A. What I recall is the latest OIG reports, I
25 believe, are talking about inappropriate payments.

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1 Studied everything, not -- I mean --

2 Q. Can you please look at Appendix II-B to your
3 report and tell me where the OIG report that -- which
4 one of those is the OIG report that you referred to.

5 A. I have not read the OIG report that I'm
6 referring to, I -- I don't pretend to tell you that
7 I've read it, it's just that numbers that have
8 been -- I've heard in conversation at Tulane.

9 Q. What is --

10 Is the OIG report referred to in Appendix II-B?

11 A. No, it is not.

12 MR. McKENNA: Move to strike all reference
13 to the OIG report; failure to comply with the court's
14 order with respect to expert discovery.

15 Q. Now you go on, after defining fraud and abuse,
16 to discuss fraud and abuse in operation. In the next
17 section of your report you discuss, in an overall
18 fashion, some things about the filing of claims in
19 Minnesota Medicaid.

20 I want to direct your attention to page 14,
21 second full paragraph. Do you have that in front of
22 you, ma'am?

23 A. Yes.

24 Q. You make the statement that "Minnesota Medicaid
25 does generally not" -- excuse me, that "Minnesota

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1 Medicaid generally does not examine claims before
2 they are paid." What is your source for that
3 statement?

4 MR. LINVILLE: I'm sorry, where are you on
5 page 14, counsel?

6 MR. McKENNA: The first -- the first full
7 sentence of the first -- or of the second full
8 paragraph. It begins with the words "Unlike much
9 insurance in areas other than health care...."

10 A. That's --

11 You can determine that from some of the
12 depositions where they're asked.

13 Q. Now what would constitute examining claims
14 before they are paid?

15 A. It would be an instance of what's sometimes
16 called prepayment review, which I don't say never
17 happens in Minnesota, I say generally it doesn't.
18 That's usually where a -- for some reason a provider
19 has been targeted or a recipient has been -- has been
20 targeted, and that before any payments will be made,
21 for example, for that particular provider or that
22 particular recipient, when a claim comes in for one
23 of those, payment -- claims will not be paid until
24 there is a complete review of the claims.

25 Q. Now you prefaced this by referring to a

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1 circumstance in which for some reason a provider or a
2 recipient has been targeted. Did I understand you
3 correctly?

4 A. Identified. I don't know what word I said, but,
5 for whatever reason, chosen to be looked at before
6 claims are paid by just -- without a review.

7 Q. Now this would be an on-hands review by a human
8 being?

9 A. Could be different types of review. It's up to
10 the agency to decide. But --

11 Q. Well is that what you have in mind when you talk
12 about examining a claim before it's paid?

13 A. There are many ways to examine claims payments
14 before they're made.

15 Q. And could one of those ways be a computer system
16 which has a series of edits to spot anomalies with
17 the claim?

18 A. Well it can be a computer system that's
19 programmed to do whatever you tell it to do.

20 Q. So a program -- excuse me. A computer program
21 system that reviews a claim before it's paid might
22 satisfy your definition of examining a claim before
23 it's paid; is that true?

24 MR. LINVILLE: As used on page 14 here?

25 MR. McKENNA: Sure. I presume it's not

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1 used any differently on page 14 than elsewhere in the
2 report.

3 MR. LINVILLE: Well you referred her to a
4 sentence -- I'm just trying to keep the record clear
5 here -- at the start of this line of questioning.

6 MR. McKENNA: Well, thank you.

7 MR. LINVILLE: I want to make sure we're
8 still on it.

9 Q. Let's make it clear. You don't use that term
10 differently anywhere in this report, do you?
11 Examining a claim, you don't change the definition of
12 that concept.

13 MR. LINVILLE: Object to form.

14 A. The concept is the same, yes.

15 Q. That's what I'm trying to get at. And one of
16 the ways to do it would be to have a computer program
17 that analyzed the claim to spot anomalies about it.
18 That would be one way to review it before it's paid;
19 true?

20 A. Well theoretically all claims are reviewed by
21 the computer before -- for anomalies before it's
22 paid.

23 Q. So that doesn't satisfy your definition of
24 reviewing the claim before it's paid; true?

25 A. If you're talking about the normal run-the-

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1 claims-through-the-computer-system, no.

2 Q. No. I'm talking about a computer system with a
3 program containing edits which would spot anomalies
4 about the claim.

5 A. Anomalies such as?

6 Q. Such as --

7 Well, do you know that the Minnesota Medicaid
8 Information System has a system of edits that reviews
9 claims before they're paid? Were you aware of that?

10 A. Yes.

11 Q. Do you know how many edits are in place?

12 A. A lot.

13 Q. Do you know how many are in place?

14 A. I don't remember. I remember a discussion of
15 it. A lot.

16 Q. Does 997 sound right?

17 MR. LINVILLE: Object to the form.

18 A. I don't remember the number.

19 MR. LINVILLE: You have to specify a point
20 in time, counsel, if you're going to have -- if
21 you're going to have a number.

22 Q. Does that sound about right, 900 plus?

23 A. I don't remember. I've seen different numbers.
24 But there are a lot, I'll agree with you on that.

25 Q. There are a lot. And did you review the system

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1 to see whether, in your opinion, there ought to be
2 additional edits in place?

3 A. From testimony that I have read, the edits that
4 are in place are not catching all the appropriate --
5 inappropriate paid claims, so therefore there are not
6 enough, if you want to look at it that way.

7 Q. No, I don't. I want you to answer my question.
8 Did you review the system to determine whether
9 additional edits ought to be in place?

10 MR. LINVILLE: Object to the form.

11 A. I think that you can put edits in place ad
12 nauseam and they won't connect or find all the
13 errors.

14 Q. Please try to focus on my question. Did you
15 review the system to determine whether additional
16 edits ought to be in place?

17 A. I reviewed the system to see whether it was
18 catching inappropriate payments.

19 Q. I'm sorry, ma'am. I'm going to have to ask you
20 to answer my question. Can you do that?

21 Did you review the system to determine whether
22 additional edits ought to be in place?

23 MR. LINVILLE: Object to the form.

24 Q. Either you did or you didn't.

25 A. And I'm trying to tell you that I think the

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1 addition of more and more edits is not -- will never
2 stop inappropriate payments being made.

3 Q. Okay. So no matter how many edits were put in
4 there wouldn't be enough to satisfy your criteria for
5 prior review; is that what you're saying?

6 A. I'm saying --

7 MR. LINVILLE: Object to form.

8 A. -- that it can never catch a hundred percent of
9 inappropriate payments.

10 Q. All right. Now you're not contending that the
11 system has to be so perfect as to catch a hundred
12 percent of the inappropriate payments; are you?

13 That's not your -- not your opinion; is it?

14 A. My opinion is that the system is not catching
15 all the inappropriate -- a substantial number of the
16 inappropriate payments being made.

17 Q. Okay. It's not catching a substantial number.

18 A. Uh-huh.

19 Q. And by "substantial number," do you have in mind
20 a percentage? What do you mean by "substantial?"

21 A. At this point all I believe we know is it's a
22 large number.

23 Q. A large ordinal number or a large percentage
24 number?

25 A. Impossible to give a concrete --

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1 We know it's a large dollar number from reports
2 we have seen.

3 Q. What reports --

4 You're talking about the national reports that
5 you have alluded to?

6 A. We know nationally it's a huge dollar number.

7 Q. Okay. But you don't have an opinion in terms of
8 a percentage about what "substantial" means as you
9 use that term; is that right?

10 MR. LINVILLE: Object to the form.

11 A. I think substantial -- I take no issue with what
12 we -- what --

13 I've seen nothing to tell me that it's less than
14 10 percent.

15 Q. No, ma'am, I don't want to know what you've seen
16 that tells you it's less. I want to know what your
17 opinion is. That's the whole purpose for us being
18 here today.

19 Is it your opinion that a certain percentage of
20 Medicaid payments are inappropriate, and that that's
21 what you mean by the term "substantial?"

22 MR. LINVILLE: Object to the form.

23 A. My opinion is that there is a substantial amount
24 or number of claims that are paid inappropriately. I
25 believe that there's nothing to indicate that it's

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1 less than the 10 percent that we see nationally.

2 Q. Okay. But you are not saying that it is your
3 opinion that it is 10 percent.

4 A. I believe it's not less than 10 percent.

5 Q. Okay. You think it's not less than 10 percent,
6 so does "substantial" mean not less than 10 percent?
7 Should we agree upon that for proceeding?

8 MR. LINVILLE: Object to the form.

9 A. We'd have to look at both the percentage and the
10 dollars to see the complete damage to the system.

11 Q. Okay. All right. Then I will cut to the chase
12 then.

13 What is your opinion as to the percentage of
14 Medicaid programs in Minnesota which are
15 inappropriately paid?

16 MR. LINVILLE: You may just want to reread
17 that, counsel.

18 MR. McKENNA: Thank you. I did misuse the
19 term "programs."

20 Q. I want to know what percentage of the payments
21 in the Minnesota Medicaid program are inappropriately
22 paid, in your opinion.

23 A. In my opinion, I think it's not less than 10
24 percent.

25 Q. All right. And the source of that opinion is

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1 that you haven't seen anything that makes you think
2 it's less than what national studies indicate; is
3 that right?

4 A. What I have seen is testimony and documents that
5 show, yes, that there are substantial numbers of
6 inappropriate payments made under the Medicaid
7 system.

8 Q. Okay. And how is it that you arrived at the 10
9 percent figure? That's what I'm getting at. Is 10
10 percent something that you are simply saying that
11 some people speak about 10 percent on a national
12 level and you haven't seen anything to convince you
13 that it's different here? Is that what I understand
14 your testimony to be?

15 MR. LINVILLE: Object to the form.

16 A. I have seen nothing yet to convince me it's any
17 lower than that. I'm still reviewing documents. I'm
18 not to give you any kind of a percentage, I'm not
19 ready to do that, but I don't believe it's going
20 to --

21 You asked my opinion.

22 Q. Well have you been instructed not to give me a
23 percentage?

24 A. No.

25 Q. But you're not ready to give a percentage. You

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1 don't have an opinion as to percentage right now; is
2 that what you're saying?

3 A. I have an opinion that I believe it's not below
4 what we see consistently, which is at least -- is a
5 bottom figure of 10 percent.

6 Q. Okay. And I want to know how you got there.
7 What I heard you saying a while ago is that nothing
8 you have seen persuades you that Minnesota is any
9 different than the 10 percent figure that you've seen
10 projected in the national studies that you've alluded
11 to.

12 MR. LINVILLE: Object to the form, that
13 mischaracterizes the testimony.

14 A. I said I've seen nothing to make me believe it's
15 lower than that.

16 Q. Right. Okay. Any other reason to use the term
17 10 percent, in your opinion?

18 A. No.

19 Q. Let's get back to the question of determining
20 what a prior examination of a claim or a claim
21 examination before it's paid would consist of.
22 You've indicated that no number of computer edits
23 that would review a claim before it's paid would be
24 sufficient to eliminate this substantial number of
25 erroneous claims that you've talked about. Did I

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1 understand that correctly?

2 MR. LINVILLE: Object to the form.

3 A. It would depend upon the type of edits you were
4 able to program into the computer.

5 Q. Okay.

6 A. There are some things that happen that there's
7 no way any computer could pick up.

8 Q. Okay. Give me an example.

9 A. No computer can tell if a service that was
10 claimed was actually provided.

11 Q. Okay. Any other examples?

12 A. No computer can detect if a payment was
13 medically necessary.

14 Q. Okay.

15 A. There may be situations in which the -- there
16 are changes being made in the system and not yet made
17 in the computer system for a period of time, there
18 are claims that will go through because there's no
19 edit there to catch. No computer can tell you
20 whether there's a mistake in beneficiary -- in
21 beneficiary eligibility. What a computer can do is
22 read numbers.

23 Q. Any other examples?

24 A. I'm sure there are many others that I just can't
25 think of at the moment.

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1 Q. Okay.

2 A. Those are --

3 Q. All right. So for those reasons a prior
4 computer review of a claim would not be adequate to
5 meet your concerns about prior review of claims; is
6 that true?

7 MR. LINVILLE: Object to the form.

8 A. Wait. Are you talking about just a run through
9 the computer with edits in place?

10 Q. Yes.

11 A. If a claim is submitted and the service that was
12 provided was not medically necessary, for example, a
13 computer with edits cannot pick that up, that's
14 correct.

15 Q. Okay. So because the computer can't do those
16 things, the computer would never -- that no computer
17 review would ever be sufficient in your view --

18 MR. LINVILLE: Object to the form.

19 Q. -- to satisfy your -- to satisfy your
20 pre-payment review concern.

21 A. Wait. I think we're confusing two issues here.

22 Q. Well I don't think we are, but let's go on to --

23 Let me refer you over to page 18 and see if we
24 can get this into a better context here. In the
25 second full paragraph on page 18 you state that, in

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1 the first sentence, that "It is generally recognized
2 among prosecutors and health policy experts" --

3 A. Wait, wait. I'm sorry, wrong page.

4 Okay.

5 Q. You say, "It is generally recognized among
6 prosecutors and health policy experts that the only
7 reliable way to detect fraud and abuse is to examine
8 an individual claim submitted by a provider for
9 payment," and then you add, "In my opinion, there is
10 no other reliable way to detect fraud and abuse."
11 Do --

12 Have I quoted your opinion correctly?

13 A. Yes.

14 Q. Okay. And you go on to say that, just as you
15 just said in your testimony, that a computer can't
16 determine whether services were actually performed,
17 et cetera, et cetera.

18 Now is that saying that unless something other
19 than a computer is used for prepayment examination of
20 claims, that fraud and abuse will not be reliably
21 detected? Is that what you're saying?

22 A. I am saying that there are quite a number of
23 instances of fraud and abuse which fall under the
24 umbrella -- well, with the examples that I've given
25 of situations where what happened was not medically

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1 necessary, that particular instance could never be
2 caught, I believe, with --

3 A computer cannot read that.

4 Q. I asked you a much more global question than
5 that, and it is a simple paraphrase of your
6 testimony. Isn't it your opinion that a computer
7 review before payment could never reliably detect
8 fraud and abuse? Is that what you say in your
9 report, and isn't that your opinion?

10 MR. LINVILLE: Object to the form.

11 A. There is some abuse that computer programs will
12 pick up.

13 Q. Why do you not want to answer my question?

14 A. Because you're misreading what I'm saying.

15 Q. Well let me ask you this: Is there any other
16 reliable way to detect fraud and abuse than prior
17 examination of an individual claim submitted by a
18 provider for payment?

19 A. To -- to detect --

20 Q. It's right here. It's just in your report.
21 Can't you agree with what's in your report?

22 MR. LINVILLE: Object to the form,
23 counsel. Why don't you let her finish her answer.

24 Maybe we could read the question back and read
25 her answer up to the time she was cut off.

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1 MR. McKENNA: No. I want --

2 If she has a problem with the question, she can
3 state that.

4 MR. LINVILLE: Counsel, the only reason I'm
5 objecting is you cut her off in the middle of the
6 witness's answer. That's not fair.

7 MR. McKENNA: Then make your objection.
8 That's what you're here to do.

9 MR. LINVILLE: I did. I did.

10 BY MR. McKENNA:

11 Q. Do you have in mind the question? Should I
12 repeat the question?

13 A. Would you, please.

14 Q. All right. I understand -- I'll try it phrasing
15 it a different way. I understand your report to be
16 here that you're saying that prosecutors and health
17 policy experts say that the only way -- the only
18 reliable way to detect fraud and abuse is to examine
19 the claims submitted by the provider for payment, and
20 you say that's your opinion, too. Isn't that right?

21 A. Yes. I'm saying the only way we will ever
22 really know about what the extent of fraud and abuse
23 is is to look at the payments beforehand.

24 Q. Okay.

25 A. Because there's so many that cannot be picked up

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1 by computer.

2 Q. All right. And the computer can't do that;

3 right?

4 A. A computer cannot detect all the fraud and

5 abuse, that's what I'm saying.

6 Q. Okay. So a human being has got to do it; right?

7 A. Yes.

8 Q. All right. And a human being, if he or she has

9 the resources to do it, can look into this situation

10 to find out whether a procedure that has been claimed

11 to have been done was actually done; right?

12 A. A human being can investigate it, yes.

13 Q. Okay. And in order to determine --

14 If Dr. X says, "I removed a mole from Mrs. Y,"

15 then that investigator, how would that person

16 determine whether or not that's a true statement?

17 A. One way is to ask the person who had the mole

18 removed.

19 Q. Good. They call up Mrs. Y and say, "Did Dr. X

20 remove the mole from you?" Right?

21 A. Possibility, yes.

22 Q. And of course if they wanted to make certain

23 that there wasn't some collusion between Mrs. X and

24 Dr. Y, they'd have to go out and look at the place

25 where the mole was removed from; right?

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1 A. Well I would say that's beyond the realm of
2 possibility, but -- I don't know --

3 In every case, I don't know that that's the
4 case. I mean it's a hypothetical. It could possibly
5 happen.

6 Q. Well I mean you understand, don't you, that
7 sometimes fraud can consist of a collusion between a
8 patient and a doctor? Right?

9 A. Correct.

10 Q. So in order to make certain that there was no
11 fraud involved in the transaction that I
12 hypothesized, an investigator might want to go out
13 and have a look at whether or not there was a scar
14 where that mole had been removed; true?

15 A. Correct.

16 Q. And then just to make certain that that mole
17 hadn't been removed in childhood or maybe there was
18 something else going on, they might have to talk to
19 some people to say, "Did you see whether or not Mrs.
20 X used to have a mole?" Might have to do that;
21 mightn't they?

22 A. I won't say that's beyond the realm of
23 possibility.

24 Q. Well, if they wanted to make certain there was
25 no fraud, no collusion between Dr. Y and Mrs. X;

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1 right?

2 A. If it was a fairly new scar, then there's no
3 need to go back to childhood, for example.

4 Q. Uh-huh. Well if it was a fairly new scar, it
5 still might not be Dr. X who removed it. Might have
6 been some other explanation; true?

7 A. True.

8 Q. Okay. So then -- then if they talked to some
9 people that said, "Yeah, I saw that she used to have
10 that mole and doesn't have it any more," they might
11 have to investigate whether those people had the kind
12 of close relationship with her that they were in fact
13 an accomplice, right, covering up for her in some
14 way?

15 A. Theoretically, that's possible.

16 Q. Okay. And if a person were going to investigate
17 whether or not a procedure is medically necessary,
18 the usual way to do that is to get the medical
19 records and review them and have them looked at by a
20 doctor of a similar degree of expertise or specialty
21 with the provider involved; true?

22 A. True.

23 Q. And they would get those records and they would
24 see whether or not this mole was the sort of thing
25 that might best have been left alone or whether it

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1 needed to be removed for biopsy purposes or something
2 like that; right?

3 A. That's --

4 Q. True?

5 A. Could be, yes.

6 Q. And lawyers couldn't do that and investigators
7 couldn't do that. A doctor would have to do that to
8 be fair to all involved; true?

9 A. True.

10 Q. And to determine whether or not there was some
11 problem with beneficiary eligibility -- let's take,
12 for example, the hypothetical of someone who has lung
13 cancer and is in a chemotherapy program. In order to
14 determine whether that person was eligible for that,
15 it would probably be a matter of whether or not they
16 met the categorical assistance requirements of a
17 certain level of poverty or disability; wouldn't that
18 be so?

19 A. No, not necessarily.

20 MR. LINVILLE: Object to the form.

21 Q. Could be just because they were aged.

22 MR. LINVILLE: Object to the form.

23 A. No. You're asking me about recipient
24 eligibility?

25 Q. Yeah, beneficiary eligibility. You said that

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1 that was an area of fraud that a computer couldn't
2 detect, and I want to explore with you what kinds of
3 things a human being might have to do to make certain
4 that that beneficiary was properly eligible.

5 And the beneficiary might put down on the form
6 that "I don't have any money."

7 A. That's a possibility, yes.

8 Q. And that that may be a substantial component in
9 their eligibility; right?

10 A. Yes.

11 Q. And how would a person go about investigating
12 whether or not that was a fraudulent statement,
13 saying "I don't have any money?"

14 A. Well that's back up at the outset. But again,
15 that's something that should have been checked when
16 the person enrolled, not that you're going out --

17 I mean ultimately we would have to investigate
18 it, but that's one of the things that should have
19 been checked into initially.

20 Q. By a human being.

21 A. Right.

22 Q. Sure.

23 A. Since it's done at a county level, the
24 enrollment process --

25 Q. Well, I mean, don't you agree with me that --

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1 that the enrollment process consists of a man at best
2 sitting across the desk from somebody and they say,
3 "Do you have any money?" and he says, "No?"

4 MR. LINVILLE: Object to the form. Are you
5 talking about the Minnesota Medicaid enrollment
6 process?

7 MR. McKENNA: Sure, I am.

8 A. That's possible.

9 Q. Well, how would -- how would a human being,
10 prior to the payment of a claim, investigate whether
11 or not this person was eligible based upon his
12 statement that he didn't have any money? How would
13 they do that investigation?

14 A. Well there are lots of theoretical answers.
15 Check for bank statements, but you may not get the
16 records.

17 Q. Ask him for his bank statements?

18 A. Bank account numbers.

19 Q. Who would they ask about his bank account
20 numbers?

21 A. Him.

22 Q. Him, okay.

23 Suppose he said, "I don't have any bank account
24 numbers," but he does, how would they -- how would
25 they find that out?

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1 A. Could be difficult.

2 Q. Would be difficult.

3 Do you know whether or not the Minnesota
4 Medicaid insurance system cross-checks its data
5 against data supplied from other sources?

6 A. I believe it cross-checks data for things like
7 Medicare beneficiaries.

8 Q. Anything else?

9 A. I have read testimony about cross-checking, but
10 I'd have to go back and look at it and see what all
11 it was. I do remember that being in there.

12 Q. All right. All right. Getting back to the
13 prior examination, is it your opinion that in order
14 to reasonably reduce the level of fraud and abuse in
15 the Medicaid system, that Minnesota ought to have a
16 system in place that every individual claim is
17 reviewed by a human being before a payment is made?

18 A. I've not been asked to give an opinion to
19 anything like that. That's not what I've been asked
20 to look at and that's not what I'm trying to give an
21 opinion on.

22 Q. So you don't have an opinion about that.

23 A. I'm not about to give an opinion on how to
24 change your Medicaid system. That's not what I've
25 been asked to do.

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1 Q. All right. But you are saying that the failure
2 of the system to have a human being review those
3 claims in advance fails to reliably detect fraud and
4 abuse; are you not?

5 A. I am saying that the only way we would ever know
6 if every claim was completely true on its face would
7 be to do that.

8 Q. Do you have an opinion as to the cost per claim
9 that would be entailed in having a human being review
10 each one before it was paid?

11 A. Could be substantial.

12 MR. LINVILLE: Counsel, --

13 A. I don't know.

14 MR. LINVILLE: -- it's three hours. When
15 you come to a good, logical point.

16 MR. McKENNA: Fine. My only comment, Mr.
17 Linville, is it's now 12:00 o'clock and we are -- we
18 still have, what, four and a half hours of -- no, we
19 have more than that, we have a total of 12 hours for
20 this and we've gone seven and a half hours now, four
21 and a half hours left. Correct?

22 MR. LINVILLE: I think that's right.

23 MR. McKENNA: And I want to try to
24 accommodate any travel needs that you have because --
25 off the record.

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1 (Discussion off the record.).

2 (Recess taken.)

3 BY MR. McKENNA:

4 Q. When you say it could be substantial, that is to
5 say, the cost of having a human being review every
6 claim before it's paid, you don't have a dollar
7 figure in mind.

8 A. No, I do not.

9 Q. Do you have an opinion as to the number of
10 additional staff it would take to conduct such a
11 prepayment review by human beings?

12 A. No.

13 Q. Do you have an opinion as to how much time on
14 the average for each claim would be required to do
15 this prepayment review by a human being?

16 A. Obviously it would vary.

17 Q. Do you know how many Medicaid claims there were
18 in any one year during the period of time that you've
19 studied in Minnesota?

20 A. I think I may have seen numbers, but I don't
21 remember them.

22 Q. Do you have an opinion --

23 I've asked you a series of questions now about
24 what it would take by way of personnel, cost, time,
25 to review every claim before it's paid. Do you have

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1 an opinion as to how many additional personnel it
2 would take to conduct a reasonable degree of prior
3 review of claims, by human beings?

4 MR. LINVILLE: Object to the form.

5 A. No.

6 Q. I'll ask you to assume that there were some 23
7 million Medicaid claims in 1996 and ask if you agree
8 with me that it would be unreasonable to expect a
9 system to have a prior review of all of those claims
10 by a human being before they were paid?

11 A. I think it's not what I've been asked to do, to
12 say what I think the system should do, but to say
13 what is.

14 Q. Unfortunately, I think this is so closely
15 connected with your opinion as to the defect in the
16 system that I must ask your opinion.

17 Well if you've not thought about that --

18 A. I don't -- can I read --

19 I don't remember the number you said.

20 Q. Twenty-three million I said.

21 A. I think it would be a very difficult thing to
22 do.

23 Q. You don't have an opinion as to whether it would
24 be unreasonable?

25 If you don't, that's fine, just say so and we'll

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1 move on. But if you're evading my question for some
2 reason, I need to know where you're going.

3 MR. LINVILLE: Object to form.

4 A. "Reasonable/unreasonable" are relative terms. I
5 think it would be extremely difficult to -- to do
6 what you just described.

7 Q. You don't have an opinion as to whether it would
8 be unreasonable; is that true?

9 A. I think it would be extremely difficult to do.

10 Q. Is there some reason why you can't or won't
11 answer my question about whether or not it's
12 unreasonable? Is it a confusing question to you?

13 A. No. I --

14 As I say, I believe what I've been asked to do
15 is say here's what is.

16 Q. Well I'm asking you to do something different.
17 I'm asking you whether or not it would be
18 unreasonable to have a human being review 23 million
19 claims before they were paid, obviously not the same
20 human being.

21 A. You have to look at the timeframe in that, and
22 if you are dealing with trying to make payments in a
23 timely fashion, given whatever you -- how you define
24 "timely fashion," that would be extremely difficult
25 to do, and in that case, perhaps unreasonable.

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1 Q. Do you know what an ICD-9 code is?

2 A. Uh-huh.

3 Q. Capital I, capital C, capital D, dash 9.

4 (Mr. Linville gestures to prompt the
5 witness to answer audibly.)

6 MR. McKENNA: You have to say "yes" or
7 "no."

8 THE WITNESS: I'm sorry.

9 MR. LINVILLE: You have to say "yes" or
10 "no." That's all I meant to say.

11 THE WITNESS: Yes.

12 Q. What is it?

13 A. It's one of the coding systems used. I think it
14 stands for something like International Categorizing
15 Diseases.

16 Q. And you understand --

17 A. It's diagnosis that's used on the -- to -- to
18 classify things that you're billing for. It's one of
19 the things that's used.

20 Q. That's a fairly universally used thing, isn't
21 it, in insurance programs and in Medicaid?

22 A. ICD-9?

23 Q. Yes.

24 A. Yes. Fairly widely used.

25 Q. You don't find anything inappropriate about

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1 using ICD-9 codes to analyze problems relative to
2 issues involving payments in the Medicaid program; do
3 you?

4 MR. LINVILLE: Object to the form.

5 A. Do I see anything wrong with using those codes?

6 Q. Yes.

7 A. No.

8 Q. And I take it that where you note that Robert
9 Baird agreed with you that there should be -- that
10 there is no other reliable way to detect fraud and
11 abuse than to have a prior examination of claims
12 before they're paid, you're not able to tell me where
13 in Mr. Baird's deposition he states that agreement;
14 are you?

15 A. I am not, sitting here at this moment.

16 Q. And if you had your file here, you would go to
17 Mr. Baird's deposition and leaf through it looking
18 for a page in which he states that agreement. Is
19 that how you'd do it?

20 A. Yes, that's how I'd do it.

21 Q. Would it be a fair statement of your opinion
22 that you believe that the state of Minnesota is not
23 detecting a substantial amount of fraud and abuse in
24 the Medicaid system, but that you don't have any
25 proposals as to how it could be done better?

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1 A. I was not asked to even consider how it could be
2 done any better, just to analyze what exists, and
3 that's what I've done.

4 Q. Well I'm asking you now: Do you have any ideas
5 how it could be done better?

6 A. That's not something I --

7 MR. LINVILLE: Object to the form.

8 A. I mean that's not something I have prepared to
9 talk about.

10 Q. So you don't have any opinions about how it
11 could be done better.

12 MR. LINVILLE: Object to the form.

13 A. It's not the purpose of my testimony.

14 Q. No, that's not my question, what the purpose of
15 your testimony is. My question is whether you have
16 any opinions as to how it could be done better.

17 A. Not something I speculated about.

18 Q. When you say you haven't speculated about it,
19 does that mean --

20 Is that the same as saying you don't have any
21 opinions on it? When you -- when you say you haven't
22 speculated about it, you mean you haven't even
23 thought about it? Is that what you're saying?

24 A. I have not addressed that issue at all in
25 preparation for my testimony because that's not what

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1 I've been asked to do.

2 Q. Okay. Can you point me to a Medicaid system in
3 another state or territory of the United States which
4 is more effectively run than Minnesota's, in your
5 opinion?

6 A. No, I'm not sure I could do that.

7 Q. Okay. Can you point me to an organization
8 similar to Blue Cross Blue Shield of Minnesota which
9 has a more effective system of detecting fraud and
10 abuse in its payment system?

11 A. Not at this moment, no.

12 Q. What can you tell me -- strike that.

13 Describe for me the Minnesota process for
14 enrolling a provider in the Medicaid program.

15 A. The process, as I understand it, is having a
16 provider sign a provider agreement in order -- and
17 stating, you know, he's in good --

18 It's a provider agreement to -- to provide
19 services to Medicaid, and in return for that Medicaid
20 will pay for the services. And there's -- it's
21 basically not a difficult process.

22 Q. You know, I didn't ask you whether it was
23 difficult or not. I want you to describe it to me.

24 A. Well the basic part of it is signing an
25 enrollment agreement.

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1 Q. All right. Is there anything else to it?

2 A. It's up to Medicaid to check -- actually do the
3 checking to show the provider is credentialed,
4 legitimately credentialed.

5 Q. What does Medicaid do in Minnesota on checking
6 on the provider?

7 A. As I understand, they check with licensure
8 boards, et cetera. I believe they check their own
9 records about the provider being dis -- I'm losing
10 words this morning. They do some --

11 They do routine checks to make sure he is a
12 provider in good standing, and basically if that's
13 the case, then he's given a provider number.

14 Q. Do you have an opinion as to whether this
15 enrollment problem in Minnesota -- or enrollment
16 process for providers in the Minnesota Medicaid
17 program is deficient in some way?

18 A. There were -- I don't remember --

19 I don't remember whether it was addressed in
20 testimony about checking providers, for example, who
21 were -- had lost their license in other states, I
22 don't remember that being addressed.

23 Q. All right. But if that wasn't addressed, that
24 would be a defect.

25 Anything else?

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1 A. Not that I remember sitting here, no.

2 Q. Are you aware of another Medicaid system in any
3 of the other states or territories that has, in your
4 opinion, a better system for enrolling providers from
5 the standpoint of preventing fraud and abuse?

6 A. There are some -- there are some ideas about
7 posting bond, et cetera, that's been done, but --

8 Q. No, no, not my question. My question is: Are
9 you aware of another Medicaid system in any of the
10 other states or territories that has, in your
11 opinion, a better system for enrolling providers from
12 the standpoint of preventing fraud and abuse?

13 MR. LINVILLE: I object to that, counsel.
14 I think she was asking and she was cut off --
15 answering and she was cut off.

16 Q. Another system. Name it.

17 A. As I sit here I don't remember one I -- I
18 would -- that would have.

19 Q. All right. Now are there any nationally
20 suggested elements to a provider enrollment program
21 from the standpoint of detecting and preventing fraud
22 and abuse that are not implemented in Minnesota that
23 you know of?

24 A. As I say, there are ideas about having providers
25 post bond.

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1 Q. Who has those ideas?

2 A. As I sit here I can't tell you. I'd have to go
3 back and look. And I -- I can't tell you if it's
4 been implemented. This is an idea that's out there,
5 and I don't know --

6 Q. Right. Any others?

7 A. That's --

8 Sitting here, that's the one that comes to mind.

9 Q. Let me follow up on the bond thing for a bit.

10 The idea would be that if Dr. X wants to make
11 Medicaid claims, he would have to file a bond with
12 the state. In what amount?

13 A. It might -- as I say, this is not something --

14 I mean I have to go back and look at this before
15 I tell you completely, but the theory behind it is
16 maybe all providers. That's not been decided.

17 Perhaps providers that have a record of abuse in the
18 past. I need to go back and -- for you to rely on
19 what I'm trying to tell you, what I also said, to go
20 back and review it.

21 Q. Are you telling me that in your opinion that is
22 a good idea?

23 A. I'm saying it's a possibility.

24 Q. But you're not saying it's a good idea because
25 you haven't thought about it yet; right?

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1 A. I'm saying it's a possibility.

2 Q. Is it a good idea?

3 A. There are several factors that you have to
4 consider for the goodness -- the well -- the well
5 being, so to speak, or the integrity or whatever you
6 want to call of the program, and you have to weigh
7 factors such as would providers pay this and still
8 enroll in Medicaid as providers if you demanded this,
9 and so I can't just say, yeah, I think that would be
10 a great idea. I mean there are factors to be
11 weighed.

12 Q. So you haven't come to a conclusion on that
13 subject.

14 A. That's correct.

15 Q. Okay. I do notice that with respect to
16 enrolling providers, I want to draw your attention to
17 page 16, the second full paragraph of C. Would you
18 read the second full paragraph to yourself.

19 A. Yes, I have.

20 Q. And this is a paragraph in which you refer to
21 the pay and chase aspect of how you see this system,
22 that that's traced back to the early years of
23 Medicaid when they were trying to enroll providers
24 and they wanted to make the system user friendly.

25 Are you suggesting they had trouble recruiting

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1 providers for the Medicaid program, that doctors were
2 reluctant to do it for some reason?

3 A. Well any reluctance on the part of providers was
4 the amount of money that Medicaid would pay, which is
5 usually lower than what they would receive for --
6 from a private insurance company, for example, and so
7 part of the thinking behind it was make it -- I've
8 used the term "user friendly," and -- because yes, we
9 need providers or -- we can't pay them as much as
10 other people can, so --

11 Q. Is it your opinion or are you testifying that in
12 Minnesota, the rates of payment for services are
13 lower for Medicaid than they are in private insurance
14 programs?

15 MR. LINVILLE: Object to the form.

16 Q. Or do you know?

17 A. I cannot recall as I sit here the specific
18 testimony, but I believe it is -- there are
19 references in some of the depositions to the fact
20 that some of the payments are lower.

21 Q. Well I just want to know whether it's --

22 Was it your opinion when you wrote this report
23 that there had to be the additional enticement of a
24 user-friendly program to get doctors to enroll in the
25 Medicaid system because they were reluctant to do it

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1 otherwise owing to the fact they'd be paid less than
2 private insurance would pay them? Is that what your
3 testimony is?

4 A. My testimony is that's one of the reasons, yes.

5 Q. Okay. So in order to overcome this reluctance,
6 which was related to lower payments, they made it
7 easier for the doctors. Is that what you're saying?

8 MR. LINVILLE: Object to form.

9 A. They made it as easy as possible for the doctors
10 to enroll, yes.

11 Q. And are you suggesting that they made it too
12 easy for them and that that ended up producing a
13 problem in the system?

14 A. I'm saying that in order for this system to
15 work, there must be providers, and it is a fact that
16 Medicaid historically pays less than other types of
17 reimbursement, and it has sometimes been difficult to
18 get providers to desire, anyway, to do this, and so
19 the system was set up not to be an impediment, not to
20 make it even harder for providers to enroll, and
21 therefore treat Medicaid -- the Medicaid population,
22 but to keep it --

23 Q. Well follow me through on this. Isn't the gist
24 of a substantial part of your report that Minnesota
25 Medicaid is a -- has a pay and chase enforcement

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1 system? Isn't that what your opinion states in this
2 report?

3 A. Yes.

4 Q. And you don't think that's a good system. Isn't
5 that also your opinion?

6 A. What I was asked to give an opinion about is
7 whether the system as it exists recoups inappropriate
8 payments, not to give a quality measure or a, you
9 know, seal of approval or not, but just to say what
10 is. And that's what I've done.

11 Q. Do you want my question reread?

12 MR. LINVILLE: Object, counsel.

13 A. No.

14 Q. Are you --

15 You're not going to answer it no matter how it's
16 done, rephrased or reread, --

17 MR. LINVILLE: Object, counsel.

18 Q. -- when you say you weren't asked to make any
19 qualitative judgments about it except to determine
20 whether or not it was recouping -- whether or not it
21 would recoup by way of inappropriate payments; right?

22 A. Well I was not asked to say this is a good
23 program or a bad program.

24 Q. Well then why did you use language in your
25 report like "the shortcomings of pay and chase

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1 enforcement?" Isn't that a qualitative judgment on
2 the pay and chase system?

3 A. There are shortcomings.

4 Q. Right. So you did express your opinion about
5 this; right? And now why is it that you won't answer
6 my questions about those opinions?

7 MR. LINVILLE: Objection.

8 A. Because they're part of the analysis. Here is
9 the analysis.

10 Q. All right.

11 A. That's not asking for a qualitative opinion.

12 Q. Okay. I'm -- okay. You don't think that
13 "shortcomings" is a qualitative opinion with respect
14 to this?

15 MR. LINVILLE: Object to the form.

16 Q. You didn't mean that to be a criticism?

17 A. I think it's a fact.

18 Q. I understand that. But you meant it to be a
19 criticism of the system; didn't you?

20 A. I meant it to be if a pay and chase system
21 exists, here are the, quote, shortcomings with such a
22 system. I mean it's --

23 Q. All right. Tell me --

24 A. -- still evaluation of what --

25 Q. Tell me what shortcomings it has then.

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1 MR. LINVILLE: Object to the form.

2 A. I meant it as a fact. I did not mean it as this
3 means this whole system is good or bad.

4 Q. Okay. Well in fact do you think that the
5 Minnesota Medicaid system is, overall, run
6 appropriately and efficiently?

7 A. I think that the Minnesota Medicaid program is
8 paying out a lot of money inappropriately.

9 Q. And their efforts to prevent doing that, are
10 those sufficient and reasonable efforts, in your
11 opinion?

12 A. I am still reading -- I'm still reading
13 depositions, rereading, and before I answer that
14 question I would reserve the time to -- to reread.

15 Q. So as of right now you haven't formed an opinion
16 along those lines.

17 A. I'm not at this moment ready to say I think --

18 It's just not something I'm ready -- I would be
19 willing to give an opinion on.

20 Q. I want to ask you about the Minnesota computer
21 system with respect to processing and analysis of
22 Medicaid claims. You know that much of the discovery
23 dealt with that subject. Do you know what I'm
24 talking about, the computer system?

25 A. Uh-huh.

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- 1 Q. Do you know what MSIS stands for?
- 2 A. Medicaid Statistical Information System.
- 3 Q. And what does MMIS stand for?
- 4 A. It is the -- it is the actual information
- 5 system, MMIS, Minnesota Medicaid Information System I
- 6 think.
- 7 Q. And has there been more than one version or --
- 8 of each of those?
- 9 A. There's been only one version of MMIS.
- 10 Q. Okay. Can you tell me what you know about the
- 11 transition from one to the other?
- 12 A. From what I've read in the depositions I've seen
- 13 so far, there was a period of time when that
- 14 transition was made where apparently -- I'm using
- 15 qualitative terms here -- it was difficult for the
- 16 Medicaid system to, with the staff it had, try to
- 17 make payment for claims. Apparently during that time
- 18 they had to hire extra staff, et cetera, in order to
- 19 get it done.
- 20 Q. And as you've reviewed that situation through
- 21 the depositions, did you draw the conclusion as to
- 22 whether this difficulty was something that was
- 23 inherent in the transfer of one system to another, or
- 24 was it the product of an error or a series of errors
- 25 on the part of the Medicaid people in Minnesota?

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1 MR. LINVILLE: Object to the form.

2 A. I'm still not clear in my mind whether --

3 There was a -- a window of time there, as I
4 recall, where there was a debate about do we try to
5 tailor MMIS I with more edits or not do that because
6 we're about to input another system? Then they
7 actually did put in the other system, and during that
8 transition there was difficulty. But I'm -- I -- I
9 can't sit here telling you that it was the fault of
10 somebody specific. I mean I'm not --

11 No, that's not something I'm willing to say now
12 because I don't know that.

13 Q. All right.

14 A. No.

15 Q. From the description that you've gotten of this
16 computerized system, do you have criticisms of the
17 effectiveness or efficiency of this system?

18 MR. LINVILLE: Objection. We've been
19 talking about at least three here. All three of the
20 computer systems?

21 MR. McKENNA: Sure.

22 MR. LINVILLE: And I'll object to the form.

23 Q. Do you want me to try it again?

24 A. No, I'll just read. I just lost it.

25 (Witness reads computer screen.)

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1 A. From what I remember of the testimony as I sit
2 here, there is discussion of the fact that MMIS I was
3 quite rigid and not perhaps as easy to change the
4 edits as the Medicaid system or program or whatever
5 word you want to use would have hoped, and so I know
6 that there were some problems that arose because of
7 that.

8 There's still the fact that no matter what
9 computer system is put in, that it can only do what
10 it's programmed to do, and therefore the situation
11 will continue that there will be claims that may go
12 through the system, even with edits in place, that
13 will be paid inappropriately.

14 Q. Do you know of another Medicaid system in the
15 other states or the territories that is more useful
16 from the standpoint of assisting in the detection or
17 prevention of fraud and abuse than that employed in
18 Minnesota?

19 A. As I sit here, no.

20 Q. And do you have specific suggestions for
21 improvement of the Minnesota computer system to make
22 it more efficient with respect to the detection or
23 prevention of fraud and abuse?

24 MR. LINVILLE: Object to the form.

25 A. Again, this is not -- this is not anything I was

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1 asked to do. That's not anything I've done. What I
2 was asked to do -- been asked to do is analyze the
3 system.

4 Q. Let me try to make it clear for you. Perhaps we
5 can eliminate this kind of exchange in the future.
6 I'm not particularly concerned about what you were
7 asked to do. I'm entitled to explore your opinions,
8 and that's my question. So whether you were asked to
9 do it or not, please answer my question. And if you
10 don't have an opinion, that's fine, just say so.

11 MR. LINVILLE: Object to the form.

12 A. At this moment I have -- I --

13 (Witness looks for the question on
14 the computer screen.)

15 THE REPORTER: Why don't I read the
16 question. It's probably off the screen now.

17 (Pending question read by the court
18 reporter.)

19 A. As I sit here, no, right now.

20 MR. LINVILLE: Counsel, we're at about the
21 time we talked about breaking for lunch, but whenever
22 you'd like.

23 MR. McKENNA: I'm content to break now for
24 lunch if --

25 MR. LINVILLE: Okay.

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1 MR. McKENNA: Off the record.
2 (Luncheon recess taken at 12:47 o'clock
3 p.m.)
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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:15 o'clock
3 p.m.)

4 BY MR. McKENNA:

5 Q. Do you know what S-U-R-S, the acronym, SURS
6 stands for?

7 A. Surveillance and Utilization Review System, I
8 believe.

9 Q. And have you heard of something called SIRS?

10 A. Yes, I have.

11 Q. And what is that?

12 A. Stands for --

13 Well actually I have it written in this report.

14 MR. LINVILLE: Could you refer to a page,
15 counsel, for that?

16 THE WITNESS: It's on page 19.

17 MR. LINVILLE: Okay.

18 A. Surveillance and Investigation Review.

19 Q. And what do you understand to be the
20 relationship between the SIRS and SURS?

21 A. From what I've seen in testimony, they're quite
22 often used pretty much interchangeably.

23 Q. Has anybody ever told you that it's not
24 Surveillance and Investigation, but Surveillance and
25 Integrity Review System?

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1 A. No.

2 Q. Have you as a part of your efforts to form a
3 basis for your opinion in this matter looked at the
4 functioning of similar units in other states or
5 territories of the United States?

6 A. I have looked at SURS units in addition to
7 Minnesota, but not in preparation for -- for this
8 case.

9 Q. All right. However, for whatever reason you
10 looked at them, can you point me to a state or
11 territory that has a SURS unit which you believe
12 functions more effectively in the area of preventing
13 or detecting fraud and abuse than the Minnesota SURS
14 unit?

15 A. Not as we sit here at this moment. That's not
16 to say I won't look at more before trial, but --

17 Q. Now when you were at Mississippi, you worked in
18 the Medicaid Fraud Control Unit. Do you understand
19 that many states have a similar unit?

20 A. Yes.

21 Q. And do you understand that such units are
22 funded, at least in part, on a startup basis by some
23 federal -- additional federal financial participation
24 out of the Medicaid program?

25 A. Yes. I understand that, yes. It's --

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1 Q. Do all states have a Medicaid Fraud Control
2 Unit?

3 A. It's not true that they've all been implemented
4 yet. Initially they did not when the program
5 happened, but --

6 Q. And as a part of your effort to form a basis for
7 your opinions in this case, did you look at the
8 Minnesota Medicaid Fraud Control Unit?

9 A. I looked at the documents that have been
10 produced, I mean that have been produced to me to
11 look at, yes.

12 Q. Okay. And aside from your knowledge of the
13 Mississippi Medicaid Fraud Control Unit and what
14 documents you've seen which might shed some light on
15 the Minnesota Medicaid Fraud Control Unit, do you
16 have any knowledge of the operation of Medicaid Fraud
17 Control Units elsewhere in the United States or
18 territories?

19 A. I have a general knowledge of how Fraud Control
20 Units work. Go ahead.

21 Q. Have you --

22 Can you point me to a Medicaid Fraud Control
23 Unit in any other state or territory that you believe
24 functions more effectively in the effort to prevent
25 or detect Medicaid fraud and abuse than that in

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1 Minnesota?

2 A. As I say, that's not --

3 Sitting here right now, no, I cannot. I will

4 continue to study. But no, today I can't do that.

5 Q. Do you have any criticism of the extent to which

6 the SURS unit and the Medicaid Fraud Control Unit or

7 the information systems in Minnesota are budgeted?

8 A. Are budgeted.

9 Q. Yes. Perhaps that is more murky than I mean for

10 it to be.

11 When I say "budgeted," I'm asking whether you

12 believe that they are adequately funded.

13 A. Based upon testimony and documents that I've

14 read, I know that there was a period in time, for

15 example, when the SURS unit had more staff than they

16 have now, for example, and at that time they had a

17 level of recovery of X, let's say -- quite a bit of

18 that seems to have been a result of some types of

19 special projects investigation -- and at a -- in a

20 year which I'm not sure I remember, somewhere around

21 '93, there was a cutback and the number of staff was

22 reduced, the number of special projects was reduced,

23 and there was a reduction in the amount of money that

24 was recovered. And to my knowledge, they're still

25 not back to that level of '93. I mean I see nothing

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1 to tell me that they are yet. So based on that
2 and -- and --

3 I have seen documents, for example, that say if
4 we had another investigator or two, they would
5 bring -- we would recoup -- I don't remember the
6 exact numbers as I sit here, but something like
7 75,000, I don't remember the exact numbers, more than
8 we have now. So from what I've seen so far, it seems
9 that there could be greater recoveries if there were
10 larger staffs, at least based on historical data.

11 Q. You make reference to this change in the SURS
12 staffing on the bottom of page 20 and the top of page
13 21 of your report.

14 A. Okay.

15 Q. I'll ask you to go there for the moment, please.

16 A. Okay.

17 Q. Going first to the first paragraph on 21, what
18 was your source for those statistics?

19 A. It is a document that shows -- that has charts.
20 I have to --

21 I don't remember if it was a SURS unit report.
22 It is a document that discusses that cutback in
23 addition to investigations about personal-care
24 attendants. As I sit here, I can't pull up the name
25 of the document.

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1 Q. Okay. Did you read the deposition of Mr.
2 McKeever in which the subject of the cutback in his
3 staff was discussed?

4 A. I read McKeever's deposition, yes.

5 Q. And you saw Mr. McKeever's explanation that he
6 didn't feel that the effectiveness of his unit was
7 altered by that cutback?

8 MR. LINVILLE: I object to the form. If
9 there is specific testimony, counsel, I think in
10 fairness it ought to be shown to the witness.

11 A. I remember his general deposition. I don't
12 remember that statement specifically.

13 Q. You don't remember him saying that.

14 A. As I sit here, I don't remember that specific
15 thing.

16 Q. All right. You've stated that you haven't seen
17 anything that would lead you to believe that the rate
18 of fraud and abuse in Minnesota was any different
19 than that projected in some of the national studies
20 that you refer to.

21 MR. LINVILLE: Object to the form. I'm
22 sorry.

23 Q. Did I understand you correctly about that?

24 A. Yes.

25 Q. You don't believe that there can be a difference

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1 between states in the country based upon cultural
2 issues and the makeup of the population?

3 MR. LINVILLE: Object to the form.

4 A. Do I believe that some states are culturally
5 different from other states?

6 Q. Correct.

7 A. Yes, I believe that's possible.

8 Q. Do you believe that that -- those cultural
9 differences can sometimes be reflected in the rates
10 of fraud and abuse in all aspects of society in those
11 states?

12 MR. LINVILLE: Object to the form.

13 A. Well I don't know that I would -- I don't know
14 that I would agree with that.

15 Q. Okay. You don't --

16 You disagree that there -- that the cultural
17 differences could sometimes be reflected in different
18 rates of fraud and abuse in society as a whole?

19 MR. LINVILLE: Object to the form of the
20 question.

21 A. I don't know that I agree with that statement.
22 I mean I --

23 Q. So you believe there's just as much fraud and
24 abuse in Minneapolis as in Chicago, for example.

25 A. Provider fraud and abuse or --

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1 Q. No.

2 A. Are you talking about Medicaid? Are you talking
3 about --

4 Q. I'm talking about fraud and abuse throughout
5 this society, throughout the culture.

6 MR. LINVILLE: Object to the form.

7 A. That's not -- that's not something I even --

8 Q. That's nothing you've ever thought about; is
9 that what you were going to say?

10 A. Well as I sit here, I mean, the question's
11 total -- took me totally aback. It's not -- it's not
12 something that I've actually sat around and focused
13 on, no.

14 Q. Okay. Well I think that you can surmise that
15 the reason I'm interested in that is that you seem to
16 indicate that it is your strongly-held belief that
17 Minnesota must be just like the national average with
18 respect to fraud and abuse in the Medicaid program,
19 and I'm wondering whether that is your opinion also
20 with respect to the society as a whole.

21 MR. LINVILLE: Object to the form.

22 Q. But I understand that you haven't even wrestled
23 with that concept one way or the other at this point.

24 A. I mean if -- it's not something that --

25 MR. LINVILLE: Again I object to the form.

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1 I don't know where we are now.

2 MR. McKENNA: Well you shouldn't --

3 Q. Are you finished with your answer?

4 A. Yes.

5 Q. And basically what you're saying to me is that
6 you haven't thought about the differences culturally
7 between the states on the subject of fraud and abuse.

8 A. I just want to make sure I understand you
9 clearly about that. Fraud and abuse in the
10 population at large for any reason?

11 Q. Uh-huh. Yes.

12 A. That simply is not something I sat around and
13 pondered, for any amount of time anyway.

14 Q. All right. Didn't you think that such an
15 inquiry on your part might be necessary before
16 concluding that Minnesota would be the same as the
17 national average with respect to fraud and abuse as
18 you understand the national average to be?

19 MR. LINVILLE: Object to the form of the
20 question.

21 A. No, because we're looking at fraud and abuse in
22 specific programs, --

23 Q. All right.

24 A. -- not in the --

25 Q. Why would that be any different than fraud and

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1 abuse in the culture as a whole, in society as a
2 whole?

3 MR. LINVILLE: Object to the form of the
4 question.

5 A. The reason I believe it's not different is based
6 on the type of information I've been seeing about the
7 types of payments that are getting through the
8 Minnesota Medicaid system. It has nothing to do with
9 the cultural descriptions of the residents.

10 Q. What are you talking about, the types of claims
11 that you've seen getting through the system?

12 A. The numbers or the --

13 I mean I have seen reports to -- for example, to
14 say that in 1993 we collected X amount of stuff -- or
15 dollars, recoveries, when we had a greater staff; now
16 we don't. Or I don't -- qualify "now." I have to go
17 back and look at the years. I know that there was a
18 reduction in staff. I know that there was a
19 reduction in the recovery. I know that there are
20 statements in documents that I have read about the
21 fact that there is much fraud in the health-care
22 system in Minnesota.

23 Q. What sources are you referring to that say there
24 is much fraud in the health-care systems in
25 Minnesota?

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1 MR. LINVILLE: Object to the form.

2 Q. I mean not those national studies that you
3 referred to in Appendix II-B. None of them addresses
4 Minnesota; does it?

5 A. No.

6 Q. Well what studies are you referring to?

7 A. I didn't say a study.

8 Q. Well what documents are you referring to?

9 A. One of the documents --

10 There is a document that I do reference in here
11 that talks about the lack of doing provider audits,
12 on-site audits, for example, nursing home audits, if
13 I remember correctly.

14 Q. You know that that document is not something
15 that opines that Minnesota has much fraud and abuse
16 in it; don't you?

17 MR. LINVILLE: Object to the form.

18 A. The document in one of -- there is a document,
19 for example --

20 Well let me back up and answer what I started to
21 first. The document that I was referring to, and
22 here it says it's a 1996 Medicaid Fraud Control Unit
23 Strike Force report, states that for every 20 dollars
24 spent on investigative audits of nursing homes, 190
25 dollars was disallowed. Now --

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1 Q. And from this you drew the conclusion that
2 Minnesota was just like all other states in
3 connection with the rate of fraud and abuse in the
4 Medicaid program.

5 MR. LINVILLE: Object to the form.

6 Q. Is that what you're telling me?

7 A. I'm saying that's one of many things I've looked
8 at that has not yet convinced me that it's any less.

9 Q. Okay. So it's not --
10 What you're telling me is it's not a matter of
11 you being persuaded it's like other states, you just
12 haven't been persuaded that it's not; is that what
13 you're saying?

14 A. From what I have seen, there are many different
15 types of claims --

16 Q. Why don't you read the question before you
17 continue.

18 MR. LINVILLE: I object to interrupting the
19 witness before she's even had a chance to answer the
20 question.

21 MR. McKENNA: Well this witness routinely
22 takes a full minute before beginning her answer to my
23 question. This witness has persistently not answered
24 the question that I've asked her. We are now running
25 short of time and I'm entitled to push this thing

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1 along, if necessary, by interrupting this witness to
2 get us on track.

3 MR. LINVILLE: I -- I don't agree with
4 that, counsel. I don't think you're entitled to
5 interrupt the witness before she's had a chance to --

6 First of all, I don't know whether -- how you
7 can know whether her answer is responsive until you
8 hear it.

9 Q. While we were talking, did you have a chance to
10 reread the question?

11 A. It's scrolling.

12 Q. I see.

13 MR. McKENNA: Mr. Reporter, would you read
14 the question, please.

15 (Record read by the court reporter.)

16 MR. LINVILLE: Object to the form.

17 A. What I'm trying to tell you, and I have been
18 consistently trying to tell you, is that based on
19 testimony and documents that I have read, I believe
20 the amount is substantial. Now I've been asked to
21 give a percentage or an estimate, and so I have said
22 to you I know these national estimates are out
23 there. We see it repeatedly, not from one source but
24 many different sources. And so I have chosen to say
25 to you that as of this moment I have nothing to tell

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1 me that I think Minnesota is less than that. But I
2 am repeatedly seeing, which I'm still going through
3 and I'm still looking at, all these instances of
4 payments that have been made inappropriately, so I've
5 seen nothing to convince me that they are not a
6 substantial amount, a very large amount of claims
7 that are being paid inappropriately.

8 Q. Do you know as an attorney something called a
9 concept of the burden of proof?

10 A. Yes.

11 Q. And you understand that the burden in civil
12 litigation upon the proponent of a particular
13 proposition is that they must prove it, not that
14 someone else must disprove it?

15 MR. LINVILLE: Object to the form.

16 Q. Do you understand that?

17 A. I understand that.

18 Q. Okay. Did you not think it was your
19 responsibility to prove your opinions, not for
20 someone else to disprove them?

21 MR. LINVILLE: Object to the form.

22 A. I am still studying on my own the documents to
23 see, and I -- as I read, the more I read, I continue
24 to see the number of inappropriate payments that have
25 been paid in Minnesota.

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1 Q. Did you not think it was your responsibility to
2 prove your opinions rather than someone else
3 disproving them? You keep saying --

4 MR. LINVILLE: Object. Object to the form.

5 Q. You keep saying that you haven't seen anything
6 to convince you otherwise. I'm asking: Don't you
7 understand that it's your responsibility to convince
8 the jury in this case, not the other way around?

9 MR. LINVILLE: Object to the form of the
10 question.

11 A. You have continued to press me for a percentage.

12 Q. Yes, I have.

13 A. And I chose that percentage to try to explain to
14 you what is believed is out there. But I am
15 continuing to try to decipher from what I have to
16 look at, and it's voluminous, what is there. I know
17 it's substantial. But if you're going to push me for
18 a percentage, I explained to you why that's a
19 percentage that I chose. But I'm not -- I'm -- I'm
20 still -- I'm still looking at this.

21 Q. Okay. So you haven't come to the opinion yet as
22 to what percentage there is, except for the fact that
23 there are supposed national studies that use the 10
24 percent figure, and you haven't seen anything yet to
25 persuade you otherwise in connection with Minnesota.

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1 Is that a fair statement?

2 MR. LINVILLE: Object to the form.

3 A. It's a fair statement that I really am not sure
4 what the amount is.

5 Q. All right.

6 A. And it's --

7 I'm still looking at it.

8 Q. Okay. Now do you know, just as a -- as a lawyer
9 and a citizen of this country, that there are
10 different crime rates between the different states of
11 this union?

12 A. Yes.

13 Q. And that those different crime rates between the
14 states are often statistically quite significantly
15 different?

16 A. Yes.

17 Q. And do you not believe that the general rate of
18 crime statistics showing the differential in the
19 states indicates that there may very well and
20 probably is a big difference in the rate of fraud and
21 abuse in those societies as well?

22 MR. LINVILLE: Object to the form.

23 Q. Or is this another aspect of this that you just
24 haven't come around to thinking about yet?

25 MR. LINVILLE: Object to the form.

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1 A. We are talking about a very large --

2 A very large part of what we are talking about
3 looking at here deals with doctors and other
4 professional providers, and I'm not sure that, in my
5 mind anyway, that a location, geographical location
6 makes differences in a professional's behavior.

7 Q. Okay. Are you prepared to conclude that it does
8 not make a difference?

9 MR. LINVILLE: Object to the form.

10 A. I've not made that conclusion. I have -- but --

11 Q. Fair enough. So you are --

12 You at this juncture still have an open mind on
13 the issue of whether or not Minnesota's fraud and
14 abuse rate is the same as these national averages.
15 Is that a fair statement?

16 A. I have not made a final determination. I have
17 not done that, that's correct.

18 Q. Excellent.

19 I want to explore a little further with you this
20 10 percent figure that you refer to in the national
21 studies. Which national studies or experts or
22 sources use that 10 percent figure?

23 A. Oh, gee. Well I quoted an OIG study that
24 gives -- it's between 13 and 14 percent.

25 Q. You quoted an OIG study which you have not

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1 referred to in your report --

2 A. That's right.

3 Q. -- in violation of the court's order; is that

4 what you're saying?

5 MR. LINVILLE: Object to the form.

6 Q. Is that right?

7 MR. LINVILLE: Object to the form.

8 A. I did quote it.

9 Q. And it's not in your report.

10 A. I think that's correct, because I just became --

11 became aware of it.

12 Q. Okay. And what other national studies?

13 A. You see reports from the FBI, for example.

14 Q. Are any of those included in your report?

15 A. No. And I didn't include them in the report

16 because it's such a general figure that's out there.

17 I mean it's not -- it's -- it's like -- it's

18 almost --

19 Q. Well didn't you think that we were entitled to

20 examine the sources of your opinion? And how could

21 we do that if you didn't disclose them?

22 MR. LINVILLE: Object to the form.

23 A. That is a -- a figure that has been in national

24 headlines all across the country for ages.

25 Q. Did you not believe that, in connection with

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1 offering your opinion in this case, that we were
2 entitled to examine the sources of your opinion?

3 MR. LINVILLE: Object to the form.

4 A. I felt that it was such a universally known
5 figure that I did not include it. I did not include
6 sources. I'm not saying they all say that, but a lot
7 do.

8 Q. All right. So in addition to the OIG study that
9 you didn't disclose, you now are referring to some
10 FBI studies that you haven't disclosed. What other
11 studies?

12 MR. LINVILLE: Object to the form.

13 Q. What other studies are you relying upon in
14 putting forth this 10 percent figure?

15 A. I'm relying upon a body of newspapers,
16 magazines. I mean it's not something that's
17 difficult to find.

18 Q. All right. And do any of the studies, the
19 documents that you have alluded to in exhibit II-B of
20 your report, set forth the 10 percent figure that
21 you're referring to?

22 A. Some of them --

23 I can't remember exactly which ones, but, for
24 example, the testimony before Cohen's committee.

25 Q. Testimony by whom?

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1 A. I don't remember. I have to go back and look at
2 it.

3 Q. Which number in your references is that?

4 A. It's number one. But I have to go back and look
5 at the report. But that was -- that was one of
6 the -- the --

7 I'd have to go back and look at it.

8 Q. Well let me see if I can't give it to you to
9 look at. Find it in there (document handed to the
10 witness) for me, will you?

11 MR. LINVILLE: Excuse me. May I just
12 review that for a second?

13 Counsel, are you going to mark this, or is this
14 just a --

15 MR. McKENNA: Well I -- I would prefer to
16 have her just look at it since it's a library book
17 which I have not bothered to copy. If you're
18 agreeable to that procedure, I'd appreciate it. If
19 not, we'll find some way to cope with this. Maybe we
20 can save time.

21 MR. LINVILLE: I noticed on the front page
22 here that this has a date of March 21st, 1995, and
23 item one on her list has a date of July 2nd, 1994.

24 MR. McKENNA: Let me --

25 MR. LINVILLE: Now that date was covered up

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1 here the way you presented it to us, but --

2 MR. McKENNA: Let me have a look.

3 MR. LINVILLE: -- this may not be quite the
4 same document.

5 MR. McKENNA: It may not be. Give me a
6 moment.

7 Yeah. What I tabbed with Post-It note,
8 manufactured by 3M, a leading Minnesota company, is
9 exactly the document that she referred to as number
10 one.

11 MR. LINVILLE: I'm sorry, I obviously
12 didn't have a chance to look through it all,
13 counsel.

14 MR. McKENNA: Okay. Well it isn't a
15 lengthy document.

16 BY MR. McKENNA:

17 Q. But you're saying that the 10 percent number is
18 in here.

19 A. I'm not sure it's in there. It's not a number I
20 made up.

21 Q. I didn't say that. I don't know whether you did
22 or not, but I'm not accusing you of that. I just
23 want --

24 If you didn't make it up, where did it come
25 from? That's what I want to know.

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1 A. It came from many different sources. I --

2 Q. Yeah. Are any of these sources on Appendix II-B
3 documents which state the 10 percent figure that
4 you're talking about?

5 A. I would have to go back and look at the
6 documents.

7 Q. Okay. All right. Now on page 18 of your report
8 you not only say 10 percent, but you quote, quote,
9 knowledgeable observers, end of quote, to the effect
10 that it's 10 to 20 percent. Now where is the 20
11 percent figure spelled out? Which national observers
12 and which knowledgeable observers?

13 A. Again I would have to go back and look at these
14 documents to identify.

15 Q. Okay.

16 A. Again, it's not a figure that I made up.

17 Q. Well I want to know where it came from.
18 Don't --

19 Do you not believe that I'm entitled to know
20 where it came from?

21 MR. LINVILLE: Object to the form.

22 A. I'm not denying your right to know.

23 Q. Okay.

24 A. I simply assumed it was so universally known
25 that it --

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1 Q. I just want to make it clear that counsel did
2 not tell you that you weren't to disclose as a part
3 of your report all matters -- excuse me, a listing of
4 all principal treatises or articles or documents
5 relied upon by the expert in support of his or her
6 opinion, you weren't told that you were supposed to
7 list those things?

8 MR. LINVILLE: Object to the form.

9 A. In the first place, I am not sure it's not in
10 any of those, I have to go back and look at them; and
11 in the second place, this was something that I
12 considered to be common knowledge in the literature
13 in the community.

14 Q. Do you believe it's possible for any state
15 Medicaid fraud -- excuse me, any state Medicaid
16 program to eliminate fraud and abuse? Is that
17 possible?

18 A. I'm not sure that's possible, no.

19 Q. Now one of the things that you are critical of
20 in your report is that the state did not meet a
21 statutory requirement that 25 percent of nursing
22 homes and group homes be subject to a field audit
23 annually; is that true?

24 MR. LINVILLE: Could you just refer us to
25 where you're reading, counsel?

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1 MR. McKENNA: Sure. Page 19, second full
2 paragraph.

3 A. Page 19?

4 Q. Page 19.

5 A. Okay.

6 Q. There is a partial paragraph at the top of some
7 seven or eight lines, but the second full --

8 A. Right. The "Documents" -- beginning with the
9 word "Documents...?"

10 Q. No, that's the first full paragraph.

11 A. "Notwithstanding...?"

12 Q. Correct.

13 A. Okay.

14 MR. LINVILLE: I will object to the form of
15 that question.

16 (Discussion off the record.)

17 Q. Good grief. Let me ask the question again.

18 Are you not critical on page 19 in your report
19 of the state for not conducting an annual audit of 25
20 percent of the nursing homes and group homes, an
21 annual field audit? Isn't that a criticism that you
22 make?

23 MR. LINVILLE: Object to the form.

24 A. That's a statement, yes, showing that they were
25 in violation of the statute.

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1 Q. Well I mean are you --

2 I asked you if it's a criticism, and you say
3 it's a statement. Are you saying it's not a
4 criticism?

5 A. Statement of fact.

6 Q. And you don't mean for it to be critical?

7 A. It's part of the analysis. This is a fact that
8 this is what happened.

9 Q. Well --

10 A. They did not meet statutory requirements.

11 Q. Okay. But as far as --

12 Are you saying that's okay or that that's good
13 or bad or what?

14 A. I am saying that as a result -- as a result of
15 that, things happen like I discussed in the paragraph
16 above, which is 20 dollars being spent on
17 investigative audits of nursing homes, 190 dollars'
18 worth were disallowed. I mean it shows that there --
19 there was a return on investment of auditing.

20 Q. If you are not critical of the state for failing
21 to do those audits, just say so and we'll move on to
22 another subject.

23 MR. LINVILLE: Object to the form.

24 A. I believe that the state was in violation of the
25 statute.

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1 Q. Is that a criticism?

2 MR. LINVILLE: Object to the form.

3 Q. This is impossible. Are you not suggesting that
4 there is some failure on the part of the state to act
5 appropriately in detecting and preventing fraud and
6 abuse arising from their failure to do a field audit
7 on an annual basis of 25 percent of the nursing homes
8 and group homes? Because if you're not being
9 critical of them for that, then we'll just go
10 somewhere else for another subject.

11 MR. LINVILLE: Object to the form.

12 MR. McKENNA: Well Mr. Linville, I -- I
13 object to the way this is proceeding. This is
14 assuming the dimensions of an intentional stall.
15 This is ridiculous. Either this is intended to be a
16 criticism of the state or it's not, and for -- for us
17 to -- to spend all this time thinking about the
18 question of whether it is or isn't a criticism is a
19 delaying tactic which I think is quite inappropriate,
20 and I believe it entitles us to additional deposition
21 time if this is what's going to be happening, and it
22 has been happening.

23 MR. LINVILLE: Well I strongly object to
24 what you say, counsel, and I think the record will be
25 very clear what's happening here. And I think the

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1 record should speak for itself and I -- I don't want
2 to get involved in speech-making that will eat up the
3 time here. Let's go on with the deposition.

4 BY MR. McKENNA:

5 Q. Ms. Overall, were you attempting to be critical
6 of the state in that paragraph, or weren't you?

7 A. I was attempting to show one way in which
8 there's a possibility that fraudulent or improper
9 payments were not being recovered.

10 Q. And that's a criticism of the state.

11 A. If you want to look at it that way. I mean
12 it's -- it's saying what it says.

13 Q. Well are you suggesting that -- that it's okay,
14 that somehow the effort to detect and prevent fraud
15 and abuse was set back by their failure to do these
16 audits?

17 A. I'm saying that there's a possibility that there
18 was money out there to be recovered that was not
19 recovered as a result of not doing the audits.

20 Q. Why is it that you are reluctant to characterize
21 that as the criticism which it obviously is?

22 MR. LINVILLE: Object to the form.

23 A. What I'm trying to do here is say here's what
24 happened, not to give a plus or minus or good or bad
25 interpretation. But I mean this is what happened.

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1 Q. You draw the final conclusion on page 21 with
2 respect to this review of the overall subject of
3 fraud and abuse detection and enforcement efforts in
4 Minnesota that a substantial amount of fraud and
5 abuse goes on undetected in the Minnesota Medicaid
6 and other state programs; correct?

7 A. Correct.

8 Q. And isn't the foregoing analysis an effort on
9 your part to suggest that the state has not acted
10 appropriately or reasonably in their efforts to
11 detect fraud and abuse in the Medicaid program?

12 A. I'm trying to say to you that I have tried to
13 outline factually what has happened and not to give a
14 report card.

15 Q. All right. Then I'll ask you: What are your
16 criticisms of the efforts of the Minnesota Medicaid
17 system to detect and prevent fraud and abuse in the
18 Medicaid program? What have they done wrong?

19 A. There's a whole series of factors that have
20 contributed to not collecting inappropriate payments.

21 Q. Let's hear them.

22 A. There is the fact that there's a -- that claims
23 go through the -- the computer system with edits in
24 place that are not caught for being inappropriate
25 payments.

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1 Q. Okay.

2 A. There seem to be different reasons for that, but
3 that's a major category --

4 Q. Okay.

5 A. -- both for providers and enrollees, --

6 Q. All right.

7 A. -- beneficiaries, whatever you want to call
8 them.

9 There seems to have been -- there was, there
10 didn't seem to be, there was a cutback in staff at
11 one point in the SURS unit, for example, that --
12 according to the report I read, which shows resulted
13 in fewer recoveries.

14 Q. All right.

15 A. There are --

16 As I've quoted before, there are, by their own
17 statements in budget requests -- and I'll have to go
18 back and look to see if it was a fraud unit or the
19 SURS unit now -- stating that if they had more
20 investigators, it would be cost effective. And it
21 gave a figure. I do not remember the figure off the
22 top of my head. But there is the statement that they
23 were in --

24 You're right, there's a statement in there that
25 they were in -- not in compliance with the statute.

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1 But --

2 Q. No, I'm asking you for your criticisms, I am not
3 asking you what statements there are. I want to know
4 what are your criticisms of them.

5 So we've got -- we got three now. What are the
6 rest?

7 A. Those are my major ones, but I'm still
8 reading. I mean I'm still reading, but what I'm
9 seeing is there is a -- there's an enormous amount of
10 payments made that shouldn't have been.

11 Q. All right. What I --

12 What I'm interested in exploring with you is
13 the -- and I can't believe this is not clear, but
14 I'll try to make it more clear. The fact that there
15 is some fraud and abuse is not something that is
16 disputed here. What I want to know is what are your
17 criticisms of the efforts of Minnesota to detect and
18 prevent fraud and abuse. Because if their efforts
19 are up to snuff and there is still fraud and abuse,
20 it's not their fault; isn't that the case?

21 MR. LINVILLE: Object to the form.

22 A. I don't believe that I have ever said anything
23 was anybody's fault.

24 Q. Well --

25 A. That's not what -- that's not what I've been

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1 asked to do.

2 Q. All right. Is it --

3 Would you agree with me that in any system
4 involving the payment of money for medical care,
5 there will be some fraud and abuse which cannot be
6 detected?

7 MR. LINVILLE: Object to the form.

8 Q. You told me a few minutes ago that you thought
9 that it's unlikely that fraud and abuse could be
10 eliminated in the system. Isn't that the same thing
11 as what I've just asked you?

12 A. If that's the same thing you just asked me, then
13 I agree.

14 Q. All right. So now refer your attention, please,
15 to page -- the bottom of page three and the top of
16 page four of your report. Do you see there where you
17 offer up the opinion that the plaintiffs' principal
18 damage experts in their report make no mention of the
19 possibility that fraud and abuse may have inflated
20 inappropriately the health-care expenditures that
21 form the basis for plaintiffs' damages calculations?
22 Do you see what I'm talking about?

23 A. Uh-huh.

24 THE REPORTER: Your answer?

25 MR. McKENNA: "Yes?"

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1 THE WITNESS: Yes. I'm sorry.

2 Q. Now you understand that one of the issues that
3 is critical in this case is whether or not Minnesota
4 was doing -- expending the level of effective effort
5 that was reasonably expected of them to detect and
6 prevent fraud and abuse; correct?

7 MR. LINVILLE: Object to the form.

8 A. No one has ever said that to me before like
9 that, so --

10 (Witness reads computer screen.)

11 A. So that is your --

12 I mean I'll accept that as your statement.

13 Q. So in your analysis of this, what you're saying
14 to me is that you have not come to any conclusion
15 about whether or not Minnesota has been expending a
16 reasonable degree of effective effort to detect and
17 prevent fraud and abuse in the Medicaid program.

18 MR. LINVILLE: Object to the form.

19 Q. That's what you meant when you said you didn't
20 have a report card for anybody.

21 MR. LINVILLE: Object to the form.

22 A. What I'm trying to tell you is I am still -- I
23 am still going through documents, I am still going
24 through testimony, I mean I'm still doing that and I
25 will continue to do that as long as I keep getting

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1 documents. And --

2 Q. But as of right now you have not come to a
3 conclusion one way or the other as to whether
4 Minnesota has expended a reasonable degree of
5 effective effort to detect and prevent Medicaid fraud
6 and abuse.

7 A. As of this moment I'm still studying. What I've
8 seen is that there's an awful lot inappropriate
9 payments going out. But I am still studying that,
10 Mr. McKenna.

11 MR. McKENNA: Read the question back, Mr.
12 Reporter, please.

13 (Record read by the court reporter.)

14 A. What I have been looking at is what's happening,
15 factually what's happening, not to make a decision on
16 whether it's a reasonable expenditure of resources,
17 et cetera. What I have been looking at is: Is there
18 fraud and abuse there? And how is it happening?
19 That's what I've been doing.

20 MR. LINVILLE: Counsel, when you -- when
21 you come to a breaking point, we're at about an hour.

22 Q. I'm prepared to keep asking the question until
23 you answer it. Do you have an opinion as to whether
24 Minnesota has been reasonable in this effort or not?

25 MR. LINVILLE: Object to the form.

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1 Q. If you don't have that opinion, fine, say you
2 don't have it.

3 A. I'm still formulating my opinion.

4 Q. You don't have one now.

5 A. No, not a final one.

6 Q. Then what is your preliminary one?

7 MR. LINVILLE: Object to the form.

8 A. The preliminary one is what I've been saying
9 over and over again. I'm seeing that there are large
10 amounts of inappropriate payments being made by the
11 Medicaid system.

12 Q. Okay. And you know, don't you, that is not the
13 same as saying Minnesota hasn't expended reasonable
14 efforts. The fact that there is what you
15 characterize a large amount is not the same as saying
16 that Minnesota has been unreasonable in its efforts.
17 You know that; don't you?

18 A. I'm not prepared to say to you Minnesota is
19 reasonable or unreasonable.

20 MR. McKENNA: Okay. Why don't we take a
21 break now.

22 MR. LINVILLE: Okay.

23 (Recess taken.)

24 BY MR. McKENNA:

25 Q. Please direct your attention to page 14 of your

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1 report.

2 A. Okay.

3 Q. On the fifth line down of the second full

4 paragraph, beginning with the word "Rather...", do

5 you find that?

6 A. Yes.

7 Q. "Rather, if a correct provider number,

8 beneficiary number, procedure code and other relevant

9 codes are entered on a submitted bill, Medicaid will

10 pay the claim without examination." Do you see that?

11 A. Yes.

12 Q. Is that your opinion with respect to the

13 Minnesota Medicaid program?

14 A. Yes, generally. Unless they've put some type of

15 prepay or something, that's generally what happens.

16 Q. Well do you not know that there is this

17 extensive computer system with some nearly 1,000

18 edits which examines many aspects of such programs?

19 A. That's not what I'm talking about.

20 Q. Well you say they pay without examination. You

21 don't call that an examination?

22 A. No, I --

23 Let me clarify something here. When I use the

24 term -- when I have used the term "prepayment

25 review," I'm not talking about -- I'm talking about

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1 an additional prepayment review that -- that we
2 talked about earlier, I'm not talking about the
3 computer system and edits when I use that term.

4 Q. And I don't know that I am either here because
5 you used the phrase "without examination." You don't
6 consider this computer analysis to be an examination?

7 A. You have to read the entire sentence.

8 Q. I did read the entire sentence.

9 A. Okay? All right. It says that if you have a
10 correct provider number, a correct beneficiary
11 number, assuming that the procedure codes and other
12 relevant codes that are entered match, there will be
13 no further examination.

14 Q. And you don't think there's --

15 Sorry. Is it that you don't consider this
16 analysis by the computer containing some 997 edits to
17 be a further examination?

18 A. I consider that when a claim comes in and it
19 goes through the computer system and the computer
20 system checks for all the relevant data, it is
21 looking at it to see if there is a valid provider
22 code, if there's a valid recipient or beneficiary
23 code, if there's a valid diagnosis, if there's a
24 valid procedure, and if all of that matches and
25 doesn't --

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1 What I'm trying to say here is the same thing we
2 talked about earlier. If all that goes through, the
3 claim is paid. If something was medically
4 unnecessary, the computer couldn't pick it up.

5 Q. All I want to know is: Don't you consider that
6 the 997 edits that the computer system applies to
7 this to be a further examination? Obviously that's
8 much more than the provider number, beneficiary
9 number, procedure code.

10 MR. LINVILLE: And other relevant codes.

11 Q. Other 995 relevant codes. Is that what you're
12 saying? I mean what I want to know is you seem to be
13 implying here that nothing goes on except for an
14 examination as to whether there is a provider number,
15 a beneficiary number, a procedure code and then
16 other, as you put it, mysterious relevant codes.

17 MR. LINVILLE: Object to the form.

18 A. All right. Even assuming a thousand edits,
19 however many you want to assume, --

20 Q. Yes.

21 A. -- as long as what's on the claim form
22 doesn't --

23 There are several -- let me -- there are several
24 things going on. The computer is originally looking
25 for numbers. Now there are some -- there may be some

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1 edits -- there are edits, let me rephrase that, but
2 quite often those edits are not going to kick out
3 something -- they would -- obviously they would kick
4 out if there's something wrong with the provider
5 number, they would kick out something if it was a
6 mastectomy for you, for example. Those types of
7 edits are in place and they work for the most part
8 that I have seen. I'm not denying that, I'm not
9 saying that doesn't happen and that that doesn't
10 work. But if there are -- if, for example, the
11 problem is over-utilization, then quite often the
12 over-utilization has to already have happened before
13 you figured it out, which means a claim was already
14 paid. Now you may go back and edit later, but you
15 don't -- quite often that's not done thinking about
16 it ahead of time.

17 Q. You better keep reading. You conclude that
18 paragraph --

19 MR. LINVILLE: Object to the form,
20 counsel.

21 Q. You conclude that paragraph with saying
22 that "one can analogize the Medicaid payment system
23 to a very large automatic teller machine that will
24 dispense money to health care providers if the proper
25 code numbers are entered on a bill." Is that --

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1 First of all, was that "very large automatic
2 teller machine," was that your language or something
3 that the lawyers put in this report?

4 A. I believe that --

5 Q. Was that your language --

6 A. Yes.

7 Q. -- or something the lawyers put in this report?

8 A. It's my language.

9 Q. And were you attempting to inject some levity
10 here, or were you seriously trying to analogize this
11 to a very large automatic teller machine?

12 MR. LINVILLE: Object to the form.

13 A. It is an analogy based on what you just read.

14 If you have the right number, if you have the right
15 provider number, you have the right recipient number,
16 you have the right procedure code, you have all the
17 codes that are right, and you put it in here, so to
18 speak --

19 Q. And the money comes out.

20 A. And the money comes out.

21 Q. So do you believe that there is any way in which
22 the computer compares the present claim to other
23 claims for that beneficiary or that provider before a
24 payment is authorized?

25 A. If there's an edit in place that tells the

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1 computer to do so.

2 Q. Do you know whether there is or isn't?

3 MR. LINVILLE: Object to the form.

4 A. I know that claims are going through and being
5 paid when they shouldn't be, so there are not edits
6 there that will stop everything.

7 Q. Would you look again at the question and answer
8 it, please?

9 MR. LINVILLE: Object to the form.

10 (Witness reads computer screen.)

11 A. There are edits in place that tell the computers
12 to kick out a lot of different things. I'm convinced
13 of that, yes.

14 Q. But you don't know whether or not there are
15 edits in place that cause this particular claim to be
16 compared to other claims from the same provider or
17 the same beneficiary.

18 MR. LINVILLE: Object to the form of the
19 question.

20 Q. Is that right?

21 A. Unless someone has told the computer to identify
22 a particular person, provider or beneficiary, or
23 unless you're looking at one of these reports that
24 compares utilization, for example, with other
25 providers and kicks out on standard deviation from

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1 some mean, I mean you can -- there are edits like
2 that that exist.

3 Q. And my question is: Do you know whether or not
4 there are edits like that in the Minnesota Medicaid
5 system? If you don't know, just say so and we'll
6 move on to another subject.

7 A. I have read testimony that talks about looking
8 at providers' either number of services provided or
9 dollars provided or -- I believe they listed another
10 category. I don't remember. I --

11 I have read language in some of this material I
12 have read that talks about the reports that look at
13 standard deviations, for example, for outliers.

14 Q. So you don't know whether or not there is a
15 report that compares this provider's other claims or
16 this beneficiary's other claims with the instant
17 claim.

18 MR. LINVILLE: Object to the form.

19 A. I know that they have reports that compare --

20 I know they generate reports that show here are
21 all the providers in this particular class and here
22 is the services they provided, and they look at -- or
23 dollars that they have been paid, and they look for
24 outliers.

25 Q. Why won't you answer my question?

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1 A. I'm trying to answer your question.

2 Q. Is your answer "Yes," that there is such an

3 audit, --

4 A. That --

5 Q. -- or is it "No, I don't know?"

6 MR. LINVILLE: "Such an audit" was your
7 question?

8 MR. McKENNA: Edit.

9 MR. LINVILLE: Edit. Your question --
10 prior question didn't talk about edits.

11 Q. Let me go back to the question that started this
12 particular circular exercise. Do you know whether or
13 not, when a provider submits a claim in the Medicaid
14 system, whether or not the computer compares that
15 claim with other claims by the same provider and
16 other claims by the same recipient?

17 A. I did not understand your question the first
18 time you asked it, so let me make sure I understand
19 it now. Are you asking me if the computer checks all
20 the claims that Provider X submits for Recipient B?

21 Q. No. My question is even broader than that. Do
22 you know whether the computer checks the instant
23 claim with all other claims by that provider and all
24 other claims by the same beneficiary?

25 A. But not in relation to each other.

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1 Q. Including in relation to each other. Do you
2 know?

3 A. I don't remember sitting here now whether
4 that --

5 Q. Well you --

6 A. -- is a pre-programmed audit or not. I'd have
7 to go back and look.

8 Q. All right. Now you said in this paragraph that
9 basically if you stick in a form with a few things
10 correct on it, you get money out, and I'd like for
11 you to tell me what other relevant codes you are
12 referring to in this paragraph when you say if a
13 correct provider number, beneficiary number,
14 procedure code and other relevant codes are entered
15 on a submitted bill, Medicaid will pay the claim
16 without examination. What are the other relevant
17 codes that you are referring to?

18 MR. LINVILLE: Object to the form.

19 A. Well there are several codes, as you know, on a
20 claim form. Yes, there must be a correct provider
21 number, yes, there must be a correct beneficiary,
22 there must be a procedure code, there are other codes
23 such as place of service on some of them, the date of
24 service. I mean it's -- it's -- it's almost
25 demographic data. But I mean, for example, it may be

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1 later on you discover that there is a bill for a
2 service provided when the -- on that date that person
3 wasn't even at the provider's office.

4 Q. No. My question is what are the other relevant
5 codes that are on the form that produce the
6 phenomenon analogous to the automatic teller
7 machine. Now you say that other relevant codes --
8 that if there's a correct provider number,
9 beneficiary number, procedure code and other relevant
10 codes on it, that it gets paid, and I want to know
11 what the other relevant codes are. Because you
12 are -- you're the one that's saying this thing spits
13 out money as if you were just putting in a credit
14 card, and I want to know what other relevant codes
15 will trigger that process. Because I think you've
16 grossly oversimplified this, and I want you to
17 explain it.

18 MR. LINVILLE: Objection.

19 A. What the computer do -- is doing is matching
20 what it has been programmed to do with what comes
21 into the system.

22 Q. Yes.

23 A. And as long as a computer reads a claim form,
24 that everything on there is filled out correctly,
25 everything, including other codes like -- many claim

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1 forms do require place of service, and that is a
2 code -- you may have a diagnosis code, but my -- the
3 point I'm trying to make is if a provider matches all
4 of these numbers with -- if what -- what goes in all
5 these boxes on the claims contains data that
6 corresponds to what appears to be a valid -- a
7 valid -- all these things I've named, then without --
8 unless that claim does something to trigger an edit,
9 it won't be spit out, it won't be kicked out.

10 Q. Have you finished your explanation of what the
11 other relevant codes are that you say will trigger
12 this payment?

13 A. Yes. I'm sure there are more, but at the moment
14 I don't --

15 Q. Well now is it your testimony that the computer
16 looks at what's within the four corners, so to speak,
17 of the particular claim, and if that's all in order,
18 it pays it?

19 MR. LINVILLE: Object to the form.

20 A. There are instances when it don't -- "when it
21 don't" -- when it doesn't.

22 Q. And those --

23 A. But that's when it's been programmed not to.

24 Q. Well, and that's what I'm trying to explore.

25 You seem to be implying in this paragraph that there

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1 are very few, simple things that have to be put on a
2 form, and if these are all in order, it gets paid
3 without examination, and I'm trying to explore what
4 your understanding is of the degree of sophistication
5 of this computer system in the review of that claim
6 and other data before the claim is paid. And if --
7 and if you don't have any more information, fine,
8 let's get to that point. But you've --

9 You're the one who makes the statement here that
10 a very few things on the form will generate a
11 payment, and I want to know whether you have any
12 knowledge that it's more sophisticated than that.

13 MR. LINVILLE: Counsel, that's not the
14 statement she makes. Let's move on to the next
15 question.

16 MR. McKENNA: Of course it's the statement
17 she makes; it's right there in black and white. You
18 probably wrote it.

19 MR. LINVILLE: Counsel, that's way out of
20 order.

21 Q. When do you think these 997 audits of this --
22 edits of this computer system take hold? After the
23 payment?

24 A. I am not saying that there are not edits in
25 place.

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1 Q. Would you answer that question? When do you
2 think those edits take place? After the payment or
3 before?

4 A. There are edits in place to check before a claim
5 is paid. I don't dispute that.

6 Q. And there are hundreds of them; aren't there?

7 A. To my knowledge, yes.

8 Q. Do you have any reason to dispute my
9 representation to you that there are 997?

10 A. No. There are hundreds, I agree with that.

11 Q. Not just a few as you imply in this paragraph.

12 MR. LINVILLE: Object to the form.

13 A. I don't disagree. I'm not --

14 Q. Have you studied the list of edits so that you
15 have some idea of what kinds of things are kicked out
16 by the computer?

17 A. I know the computer will pick up discrepancies
18 like in -- for example, if none of this matches,
19 if -- the example I already gave you, if the -- if
20 it's a procedure, for example, that should be ObGyn
21 and it's for a man, obviously it's wrong, it will be
22 kicked out. If it's --

23 There are a lot of edits that will kick it out.
24 I'm not saying there are not edits that will kick it
25 out.

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1 Q. Well --

2 A. But if you -- go ahead.

3 Q. -- ma'am, I suggest that you are saying that.

4 Now would you agree with me that analogizing
5 this system with this complicated computer system of
6 analyzing these claims and other data before the
7 claim is paid, that that's several orders of
8 magnitude more complex than an automated teller
9 machine?

10 MR. LINVILLE: Object to the form.

11 A. I don't dispute that there are more edits in
12 place than there are in something like a teller
13 machine.

14 Q. Would you agree with me that it's misleading to
15 analogize it to an automated teller machine?

16 MR. LINVILLE: Object to the form.

17 A. No, I will not, I will not agree with you.

18 Q. All right. Let me explore what your experience
19 is with an automated teller machine. What I
20 understand you to be referring to is the sort of
21 system where, if I've got a credit card and I punch
22 in it and I am able to put in a PIN or a personal
23 identification number and tell it how much money I
24 want, it gives me money; right?

25 A. Right.

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1 MR. LINVILLE: Object to the form.

2 Q. And that's the kind of automated teller machine
3 system that you're talking about; correct?

4 A. Yes. I'm talking about a system -- a system in
5 which, if you can match the numbers, you will be
6 paid.

7 Q. Well this statement here doesn't say anything
8 about a claim which has to pass 997 computerized
9 edits before it's paid; does it? This implies just a
10 few things have to take place.

11 MR. LINVILLE: Object to the form.

12 Q. Isn't that so?

13 MR. LINVILLE: Object to the form.

14 A. I don't believe that's what it says.

15 Q. Well, so when you say "other relevant codes,"
16 how many other relevant codes are you talking about?
17 You don't know; do you?

18 A. Sitting here, I don't remember a number, no.

19 Q. Have you ever seen a Minnesota Medicaid claim
20 form?

21 A. Yes, I believe I -- I was shown one early on. I
22 haven't looked at one lately.

23 Q. Do you know the percentage of Minnesota Medicaid
24 claims which are submitted electronically with no
25 paper involved at all? Do you know that?

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1 MR. LINVILLE: Object to the form.

2 At what point in time, counsel?

3 MR. McKENNA: At any time.

4 A. No, I do not know what -- how -- the percent
5 that's done electronically.

6 Q. Please direct your attention to page 15 of your
7 report, and you list common examples of fraud and
8 abuse at the top of the page. Do you have any
9 opinion as to the percentage of each of those that is
10 present in Minnesota?

11 A. A percentage?

12 Q. Yes.

13 A. No.

14 Q. Do you have an opinion as to the amount in
15 dollars of each of those that's present in Minnesota?

16 A. I'm still --

17 This is the type of data I'm still looking
18 through.

19 Q. Well you've reviewed the things which have been
20 listed on the disclosures with respect to the support
21 for your opinion; isn't that true?

22 A. Yes.

23 Q. Okay. Do you know what percentage of Minnesota
24 Medicaid recipients are in managed care programs, now
25 or at any time during the period that you studied?

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1 A. What percentage? No.

2 Q. Do you believe that the use of a managed care
3 program has an impact upon the degree of fraud and
4 abuse in the payments made by the Medicaid program to
5 the managed care organization?

6 MR. LINVILLE: Object to the form.

7 Q. That is a little awkward. Perhaps before you
8 have to scratch your head too much over that, let me
9 try it again.

10 You understand now that Minnesota, in company
11 with many other states, has moved more and more to a
12 managed care approach to the Medicaid program; is
13 that true?

14 A. I know that Minnesota has begun a managed care
15 Medicaid program, yes.

16 Q. And essentially the managed care program
17 involves Minnesota paying to another organization a
18 certain amount of money to provide services to a
19 population that needs to be served; correct?

20 A. I believe so, yes.

21 Q. And the degree of fraud and abuse that might be
22 present in such a program is primarily a problem of
23 the provider and not Medicaid in that circumstance;
24 isn't that true?

25 MR. LINVILLE: Object to the form.

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1 A. Theoretically, that's true.

2 Q. Do you know what form the Minnesota I.D. card
3 for a recipient of Medicaid takes?

4 A. No, I --

5 Seems that I read -- I have read something about
6 that, but I don't recall it at the moment.

7 Q. Now you characterized Minnesota as being a pay
8 and chase program. At one point in your opinion on
9 page 16 you say that the term "pay and chase"
10 describes the enforcement efforts of both Blue Cross
11 Blue Shield and of the Minnesota state programs, and
12 at the bottom of the next paragraph you refer to the
13 vestiges of pay and chase.

14 Are you there acknowledging that pay and chase
15 is no longer an accurate description of the Minnesota
16 program?

17 MR. LINVILLE: Object to the form. Where
18 is the reference to the vestiges of the pay and
19 chase?

20 MR. McKENNA: The end of the
21 paragraph right above paragraph D., page 16.

22 MR. LINVILLE: Ah. I thought you were on
23 the next page. I'm sorry.

24 A. I'm saying that there's still pay and chase in
25 Minnesota.

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1 Q. But it's not anywhere near as prevalent as it
2 once was; isn't that true? Isn't that what you're
3 saying when you say "vestiges?" Doesn't "vestiges"
4 mean the remaining traces of something which was once
5 more prevalent?

6 MR. LINVILLE: Object to the form.

7 A. There's still pay and chase here, I believe,
8 fully. I'm still looking at to see -- I'm still
9 analyzing all this stuff to see what's currently
10 happening.

11 Q. Ma'am, you're here to provide your expert
12 testimony in this deposition. Are you saying that
13 the principal parts of your opinion are yet to be
14 formed?

15 A. No. But I'm saying --

16 MR. LINVILLE: Object to form.

17 A. -- before I give a final opinion.

18 Q. All right. You no longer stand by the opinion
19 that the pay and chase describes the enforcement
20 efforts?

21 MR. LINVILLE: Object to the form.

22 A. I believe that pay and chase still describes the
23 efforts.

24 Q. All right. And is Minnesota involved in pay and
25 chase to a greater degree than any other state

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1 program that you know of?

2 A. Sitting here right now, no, I would not say that
3 it is.

4 Q. Can you --

5 Can you refer me to a Medicaid program in any
6 other state or territory which is more advanced than
7 Minnesota in moving away from pay and chase?

8 A. Again, without further comparison to other
9 states, the answer is no.

10 Q. And again in paragraph -- the second paragraph
11 of paragraph C. on page 16, when you refer to pay and
12 chase being produced by the effort to make the
13 program user friendly, there's nothing wrong with
14 physicians wanting to be paid promptly; is there?

15 MR. LINVILLE: Object to the form.

16 A. I think not.

17 Q. And that's not unreasonably courting the favor
18 of physicians, to offer up a system that pays them
19 promptly; is it?

20 A. A system that pays them promptly, no.

21 Q. Well you seem to be implying here that we got
22 into this pay and chase thing because we were hungry
23 to attract doctors for the Medicaid program, and I
24 want to know whether you think there was something
25 wrong with the way we did it.

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1 MR. LINVILLE: Object to the form.

2 A. I'm saying that when we began the program, we
3 did not have all the systems we have seen gradually
4 that we've had to put in, more and more and more
5 edits, et cetera, et cetera, to try to prevent
6 inappropriate payment. Those were not there at the
7 outset. And so I mean there's a reason that we've
8 decided we have to put all these edits and stuff in.

9 Q. Right.

10 A. So my point is that they were not there when we
11 began.

12 Q. Well do you not understand from your study of
13 this that even where all the additional edits and all
14 of the prepayment examination that takes place, that
15 claims are being paid more quickly now than they were
16 at the beginning of the program?

17 MR. LINVILLE: Object to the form.

18 A. Yes, I assume they're being paid more quickly.

19 Q. Okay. So I don't understand your point in
20 paragraph -- the second paragraph of paragraph C.
21 Are you --

22 I mean you say that the pay and chase approach
23 can be traced back to this time, but you're not
24 suggesting we did anything wrong in setting it up
25 that way; is that right?

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1 MR. LINVILLE: Object to the form.

2 A. I'm saying that we set it up on the honor code,
3 so to speak, and we have seen that we are having to
4 move away from just paying claims based on that
5 system. We are having -- we have seen that we have
6 to do something different about paying claims, and it
7 has more to do with whether they are paid in a timely
8 manner.

9 Q. Would it --

10 Would you not agree with me that a substantial
11 amount of effort has been expended in the Minnesota
12 system to move away from the payment of claims before
13 they are examined?

14 MR. LINVILLE: Object to the form.

15 A. I know that there has been some effort made to
16 move away from that. Again, that's -- that's the
17 type of stuff I'm still going through. But yes, I'm
18 aware that there has been effort made.

19 Q. Well as you sit there today, are you critical of
20 the amount of effort or the pace of the effort to
21 move away from payment before examination in the
22 Minnesota Medicaid program?

23 MR. LINVILLE: Object to the form.

24 A. I'm not sitting here to be critical of that, I'm
25 just -- I'm still trying to figure out what all

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1 they've done, but not to be critical of the effort.

2 Q. Okay. Let me refer your attention to page 17 of
3 your report, the second paragraph beginning with the
4 words "Administrative enforcement...." Please read
5 that to yourself.

6 A. Okay.

7 Okay.

8 Q. What is your source for your statement that
9 organizations responsible for administrative remedies
10 tend to be less aggressive and less well funded than
11 criminal enforcement agencies?

12 A. An example is the cutback in the SURS unit.

13 Q. No, my source is what --

14 My question is: What is your source for that
15 statement? Did you -- does that come from your
16 experience or from conclusions that you drew?

17 A. Part of that comes from my experience, yes.

18 Q. Okay. And part of it comes from your review of
19 documents in this case?

20 A. Well yes. I'm giving you an example of a
21 cutback when --

22 Q. All right. And you believe that SURS is less
23 well funded than criminal enforcement agencies?

24 A. I think it varies, but I think that quite
25 frequently that is the case.

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1 Q. Do you know anything about what happened to the
2 budgets of criminal enforcement agencies at the same
3 time that the SURS budget was being cut back?

4 MR. LINVILLE: Object to the form of the
5 question.

6 A. I have to stop and think about the fraud unit.
7 At the moment I'm just simply drawing a blank.

8 Q. Do you need to take a break?

9 A. Could we break for just a moment?

10 Q. Absolutely.

11 (Recess taken.)

12 BY MR. McKENNA:

13 Q. Do you know anything about what happened to the
14 budgets of criminal enforcement agencies at the same
15 time that the SURS budget was being cut back?

16 A. I've looked at that data. I will have to go
17 back and look at it again. When I made this --

18 When I wrote this, this was a statement of
19 something that happens in general.

20 Q. All right. What is the source of your knowledge
21 of the aggressiveness of Minnesota administrative
22 agencies?

23 A. I have not seen a whole lot yet to -- enough
24 that I can tell you whether I believe they -- they --
25 whether I would -- (coughing) sorry -- how aggressive

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1 I would categorize it.

2 Q. So at least in Minnesota, you don't know whether
3 it's true that the administrative remedies
4 organizations are less aggressive and less well
5 funded than the criminal enforcement agencies,
6 although that may be true generally; right?

7 A. I would have to go back and look at the data.

8 I'm not --

9 Correct.

10 Q. Well do you have data about any criminal
11 enforcement agencies other than the Minnesota
12 Medicaid Fraud Control Unit?

13 A. As I remember and --

14 I think that's all I have.

15 Q. Do you have data on any administrative
16 organizations other than SURS?

17 A. I don't recall.

18 Q. Now the next paragraph you say that "Another
19 problem is that -- the time that can pass before an
20 inappropriate payment is discovered and
21 investigated," and you say that "...by the time an
22 inappropriate payment is discovered and documented,
23 there are legal bars to a full recovery."

24 MR. LINVILLE: Object to the form.

25 Q. Did I state that correctly from paragraph 17 --

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1 page 17 of your report?

2 A. Yes, you did.

3 MR. LINVILLE: I'm sorry, if you were
4 reading, I don't think you read it correctly, if
5 that's what you meant.

6 MR. McKENNA: Well I'm just looking at the
7 screen, and I think it is the same, but I'll try it
8 again if you're concerned that I misplaced an
9 adjective or something.

10 Q. "Another problem is the time that can pass
11 before an inappropriate payment is discovered and
12 investigated, period. One common outcome is that by
13 the time an inappropriate payment is discovered and
14 documented, there are legal bars to a full recovery."
15 Did I read that correctly?

16 A. Yes.

17 Q. And the legal bar you're talking about is the
18 statute of limitations?

19 A. Yes, that's the prime --

20 Q. What is the Minnesota statute of limitations on
21 the recovery for a fraud?

22 A. I still do not know what the answer to that
23 question is.

24 Q. All right. Do you know what the Minnesota
25 statute of limitations is with respect to any kind of

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1 action?

2 A. Not that I recall.

3 Q. Do you know whether or not, under the law of
4 Minnesota, the existence of fraud in connection with
5 a cause of action may have an effect upon the statute
6 of limitations?

7 A. I don't recall as I sit here.

8 Q. Would it be fair to say, then, that you don't
9 know the extent to which, if any, the observation in
10 this paragraph holds true for Minnesota enforcement
11 of Medicaid efforts?

12 A. No. That's something else that I will
13 eventually address specific to Minnesota. This is a
14 statement about in general, but --

15 Q. Why haven't you done that before now? I'm
16 curious. You've been working on this case since --
17 since June, and you know that now's the time for your
18 deposition, and the trial is in January. Why haven't
19 you addressed that before now and why haven't you
20 concluded your work on these other questions that you
21 keep telling me that you haven't got an opinion on
22 yet?

23 MR. LINVILLE: Object to the form.

24 Compound.

25 A. Because several different things have happened.

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1 Q. Well I don't need for you to --

2 If they're personal things, that's fine. I
3 don't need for you to go into what the personal
4 reasons might be. I'm not here to delve into your
5 personal life, I just want to know whether --

6 Have you been asked to defer your opinion on
7 subjects until after this deposition?

8 A. No, I have not.

9 Q. You just haven't completed your work on these
10 things; is that it?

11 A. Correct.

12 Q. And the next paragraph on page 17 says,
13 "Finally, comma, even if a judgment can be obtained
14 against the responsible provider, comma, often that
15 person or entity is unable to repay the
16 inappropriately received funds, period." Did I read
17 that correctly?

18 A. Yes.

19 Q. What is your source for that statement? Just
20 your general experience?

21 A. Yes.

22 Q. Do you have an example of that having occurred
23 in Minnesota?

24 A. I don't recall seeing anything about that yet in
25 Minnesota. I'm -- as I sit here, I don't recall

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1 having --

2 I don't know.

3 Q. All right. Then the final paragraph on page 17,
4 you say, "For this reason -- For these reasons, and
5 others, it is typical of 'pay and chase' enforcement
6 that only a small amount of inappropriate payments
7 are ever recovered by the health insurance program."
8 Did I read that correctly?

9 A. Yes.

10 Q. And are you speaking there about your general
11 experience or general understanding of the problems
12 of pay and chase?

13 A. Yes.

14 Q. Can you give me an example of any claim or any
15 inappropriate payment in Minnesota, the recovery of
16 which was prevented by one of the factors that you
17 expressed on page 17?

18 A. These are all factors that I'm still trying to
19 answer --

20 Q. So as --

21 A. -- specific to Minnesota.

22 Q. -- of the present time, you don't have an
23 example of any effort to collect an inappropriately
24 made payment that has been frustrated in Minnesota
25 because of one of these factors.

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1 MR. LINVILLE: Objection.

2 A. Not to the point of being ready to say this

3 is --

4 I'm not ready to render a final opinion on

5 these, no.

6 Q. Well do you have an example of a payment that

7 was frustrated in recovery, or don't you? I mean if

8 you don't have one yet, that's fine, just tell me you

9 don't have one yet. But --

10 MR. LINVILLE: Object to the form.

11 Q. -- your answer literally implies that you're not

12 ready to tell me.

13 A. I've given you an example of what I know when

14 the cutback occurred in SURS, for example, in '93 or

15 whenever, close to there, when obviously recovery

16 went way down. I mean I know that occurred. I don't

17 believe that's the only thing I've read, but at this

18 moment that's all I remember.

19 Q. Well are you --

20 Do you have recollection of reading about a

21 case, a particular instance in which an effort to

22 recover back an inappropriate payment in Minnesota

23 was frustrated by one of these factors?

24 A. A specific --

25 Q. Yes.

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1 A. Specific case?

2 Q. Yes.

3 A. Sitting here, no, I don't remember specific
4 cases. I remember seeing statistics, for example,
5 on --

6 Q. Do you remember whether or not Medicaid fraud
7 control units, for example, have a national peer
8 organization of other Medicaid fraud control units?

9 A. Yes, there is an organization. There is an
10 organization that --

11 Yes.

12 Q. Do you know whether or not Minnesota's Medicaid
13 Fraud Control Unit has ever been recognized for
14 excellence in any area with regard to the evaluation
15 of its peer organization?

16 A. No, I don't.

17 Q. Do you know that --

18 Do you know who I mean when I use the term
19 "HCFA?"

20 A. Yes.

21 Q. Do you know whether or not HCFA has a practice
22 of examining Medicaid programs in the states and
23 territories and offering up to other Medicaid
24 programs what they consider to be examples of best
25 practices with regard to certain areas of Medicaid

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1 enforcement?

2 A. Yes, I do.

3 Q. And do you know whether or not Minnesota's
4 Medicaid program has been recognized in any way by
5 HCFA in the area of best practices regarding one
6 aspect or another of their administration of the
7 Medicaid program?

8 MR. LINVILLE: Object to the form.

9 A. I have read materials that reflect that fact.

10 Q. Okay. Do you dispute that that was deserved?

11 A. No.

12 Q. Okay. Do you have any idea where in the
13 hierarchy of effectiveness and efficiency Minnesota
14 stands with regard to the ranking of its Medicaid
15 program by HCFA?

16 MR. LINVILLE: Object to the form.

17 A. Ranking by HCFA in what respect?

18 Q. Well in any respect.

19 A. In what category?

20 Q. In any category. Do you have any information
21 like that?

22 A. The information I've read has talked about the
23 review you just mentioned, they were rated so highly,
24 I have seen data that reflects that.

25 Q. Okay. In fact what you have seen has indicated

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1 uniformly, hasn't it, that the Minnesota Medicaid
2 program is regarded by HCFA, by peer organizations,
3 by other national experts, as being in many ways a
4 model of its kind?

5 MR. LINVILLE: Object to the form.

6 A. I have seen information that says that the
7 Minnesota Medicaid program is highly recognized by
8 HCFA, and the example you gave a moment ago, I
9 remember seeing that, yes.

10 Q. Do you have any reason to dispute the accuracy
11 of that assessment?

12 MR. LINVILLE: Object to the form.

13 A. I have -- I have not read the assessment. I
14 read information that states that. And I'm not --

15 No, I have no, as we sit here, no reason to
16 dispute that.

17 Q. Okay. And do you --

18 Do you yourself have an opinion as to where
19 Minnesota ought to properly be ranked with respect to
20 the overall quality of its Medicaid program from the
21 standpoint of detecting and preventing fraud and
22 abuse?

23 MR. LINVILLE: Object to the form.

24 A. No, that's -- that's not an opinion I have
25 formulated.

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1 Q. And I'd like to direct your attention, please,
2 to paragraph -- or page 19, the first full paragraph
3 beginning with the words -- no, strike that. I'm --
4 yes, beginning with the word "Documents...."

5 A. Okay.

6 Q. Now the last sentence of that says, "For
7 example, a 1986 MFCU Strike Force Report states that
8 for every 20 dollars spent on investigative audits of
9 nursing homes, 190 dollars was disallowed." Does
10 that mean 190 dollars of claims for reimbursement, is
11 that what you mean?

12 MR. LINVILLE: Object to the form.

13 A. That is quoting -- that is quoting what the MFC
14 reported, and I believe it means -- again I'd have to
15 go back and -- and restudy all this, but 190 dollars'
16 worth of reimbursement sought was disallowed.

17 Q. All right. Now I notice that you use the word
18 "investigative" to qualify the word "audits" there;
19 correct?

20 A. Yes.

21 Q. And in the next paragraph you -- this is where
22 you point out that field audits were not done of 25
23 percent of nursing homes and group homes on an annual
24 basis as required by statute; correct?

25 A. Yes.

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1 Q. What's the difference between a field audit and
2 an investigative audit?

3 A. To the best of my recollection, investigative
4 audit is the language that was used in the strike
5 force report. I have to go back and look at that,
6 but I believe that came from there. A field audit,
7 obviously, is where you go out to the facility and do
8 an on-site audit. Technically a field audit can be
9 an investigative audit.

10 Q. Well are you suggesting in those two paragraphs
11 that investigative audits are the same thing as field
12 audits?

13 MR. LINVILLE: Object to the form.

14 A. No, I'm not suggesting. I am just stating this
15 is in a report, this is -- are the numbers that the
16 Medicaid fraud unit itself presented.

17 Q. All right. Then perhaps you can explain to me
18 what you mean by the sentence that says,
19 "Notwithstanding that rate of recovery, it appears
20 that the state was not able to meet a statutory
21 requirement that 25 percent of nursing homes and
22 group homes be subject to a field audit annually."
23 Were you suggesting that if they had done the field
24 audits, that they would have recovered 190 dollars
25 for every 20 dollars expended in that audit?

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1 A. I'm saying that regardless of whether an
2 investigative audit includes a field audit or --
3 Whatever type of investigative audit shows that
4 for every 20 dollars spent, 190 dollars was
5 disallowed. Now assuming that is merely a desk
6 audit, for example --

7 Q. I don't want you to assume anything. I want you
8 to tell me what you meant.

9 A. Well I'm telling you what the language in this
10 says.

11 Q. No. I want to know what you meant.

12 A. All right.

13 MR. LINVILLE: Object to the form.

14 Q. Let me see if I can't phrase the question in a
15 way that might make it easier for you to respond.

16 The use of the word "notwithstanding" to refer
17 back to the previous paragraph makes me think that
18 you are implying that the failure to do the field
19 audits as required by statute meant that the state
20 was foregoing a recovery of 190 dollars for every 20
21 dollars expended. Were you suggesting that?

22 A. I am suggesting that -- let's see how I can say
23 this. It's taken all in context. A field audit
24 normally --

25 When you go out and do a field audit, you're

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1 looking at more things than you do a desk audit. I'm
2 not sure what they meant by "investigative audit,"
3 but we know that their own numbers say every
4 dollar -- 20 dollars we spent doing that, we -- 190
5 dollars were disallowed. Knowing that, they still
6 didn't do more than four percent of the audits of
7 nursing homes.

8 Q. All right. But you're telling me that so far as
9 you can -- are you --

10 As far as you are concerned, you're not sure
11 whether or not "investigative audit" means a desk
12 audit or a field audit.

13 A. But regardless, they spent 20 dollars and
14 disallowed 190 for all those 20 dollars.

15 Q. I understand that.

16 You're not telling me in these two paragraphs
17 that no desk audit was done of these nursing homes;
18 are you? You're simply saying that no field audit
19 was done.

20 MR. LINVILLE: Object to the form.

21 A. That's possible.

22 Q. Okay. And if "investigative audits" includes a
23 desk audit, then the state did not miss a recovery by
24 failure to do the field audit. They still got back
25 190 dollars for every 20 dollars spent in audit

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1 effort; didn't they?

2 MR. LINVILLE: Object to the form.

3 A. That's possible. I would have to go back and
4 look at what this report actually says, but what you
5 said is possible.

6 Q. All right. Now do you know the percentage of
7 nursing homes and group homes that were subjected to
8 a desk audit every year?

9 A. No, I do not. I don't think I -- I --
10 I don't remember seeing that.

11 Q. It's possible that by utilizing desk audits
12 instead of field audits, that the Minnesota Medicaid
13 program was able to audit far more of these nursing
14 homes and group homes than if they had done field
15 audits. Isn't that possible?

16 MR. LINVILLE: Object to the form.

17 A. That's a possibility.

18 Q. Okay. What is it that makes a field audit more
19 desirable than a desk audit?

20 A. Well, number one, statutory requirement, but
21 number two, when you do a field audit you are looking
22 at much more data, you are looking at --

23 In a desk audit, it may be possible that you ask
24 a provider to send you X out of their files rather
25 than going to get it and rather than your having

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1 seen -- your investigators actually having seen the
2 files. I mean in order to know --

3 For example, on a Medicaid cost report from a
4 nursing facility, I mean you have a cost report, but
5 in order to actually back up what -- what really
6 happened, you need to see books, and when you do a
7 desk audit, you're not seeing that.

8 Q. Now you're saying that in a desk audit, although
9 you may see the information including copies of the
10 books, that that's not as good as going out to the
11 facility and seeing the books. Is that what you're
12 telling me?

13 A. In the first place, quite often in a desk audit
14 you're not seeing all the books. When you go out and
15 do a field audit, you're sending your investigators
16 in, and it's not something that -- I mean they have
17 much more opportunity to see what really happened on
18 site than to see a selected group of papers that
19 comes in for a desk audit or a cost report.

20 Q. Now when they go to the site, they ask to see
21 only a selected group of papers; don't they? They
22 don't review every piece of paper in the whole
23 facility; do they?

24 MR. LINVILLE: Object to the form.

25 A. The scope can be quite narrow, the scope can be

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1 quiet large.

2 Q. And isn't that true of a desk audit as well,
3 that the scope can be narrow or the scope can be
4 large?

5 A. Yes. But it's not -- it's not --

6 You would not normally expect to have a set of
7 books come in from a facility along with their cost
8 reports to desk audit -- to do a desk audit.

9 Q. Tell me what you've reviewed which informs you
10 what a desk audit consists of in the Minnesota
11 Medicaid program.

12 A. The material I have read so far when discussing
13 desk audits --

14 Q. What material?

15 A. Testimony.

16 Q. What testimony?

17 A. Sitting here, I don't remember whose testimony.

18 Q. Okay. And what was it that was said in that
19 testimony about what constituted a desk audit?

20 A. It was a discussion of asking providers to send
21 whatever you wanted to look at. Part of the file.

22 Q. Right.

23 A. And I don't -- you know --

24 Q. The desk audits have the power to ask for
25 anything they want to; don't they?

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1 MR. LINVILLE: Object to form.

2 A. Theoretically that's true.

3 Q. And the difference would be that if they went
4 out to the facility, there might be less time for
5 them to fake the books. Is that what you're saying?

6 MR. LINVILLE: Object to the form.

7 A. That's a possibility, too.

8 Q. Well I'm trying to get a handle on what is the
9 magic about going out to the site, aside from taking
10 a lot more time and expense.

11 MR. LINVILLE: Object to the form.

12 A. Well often you find when looking at the books,
13 it is not -- it is not --

14 It is not that it's never happened that there
15 were different sets of books. I mean that -- what
16 you just cited is a -- is within the realm of
17 possibility. But also you usually see a broader,
18 much broader scope even though you might have the
19 power to ask for something to be sent in. Quite
20 often you go and look at the books and you find that
21 there's even more than you thought.

22 Q. And how would that not be possible with the desk
23 audit?

24 A. Theoretically it may be possible.

25 Q. Okay. In a system of having --

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1 MR. LINVILLE: Wait a second. Wait a
2 second. Let her finish her answer.

3 A. I still don't know yet. I still have to look.
4 Nothing you've shown me, what I've read yet, is that
5 a desk audit hasn't been that broad.

6 Q. I thought you told me that you knew what a desk
7 audit was, from what you said.

8 MR. LINVILLE: Object to form.

9 A. I just told you that I read about desk audits.
10 Doesn't tell you that I know what the scope of any
11 desk audit has been.

12 Q. I see. So you don't know what the scope of a
13 desk audit is in Minnesota.

14 MR. LINVILLE: Object to the form.

15 A. I don't know what the reality is of what the
16 scope of desk audits --

17 Q. All right.

18 A. -- has actually been.

19 Q. So you're extrapolating back to your experience
20 in Mississippi as to what your experience was on a
21 desk audit when you were working with a provider; is
22 that right?

23 A. No, I'm saying that I've read testimony here
24 saying we ask a provider to send us X, but I have
25 read nothing to -- to let me know how big X is.

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1 Q. I see. So you don't know the scope of material
2 that might be sought and you can't compare that for
3 me with what would be seen if you went out to the
4 site; is that true?

5 MR. LINVILLE: Object to the form.

6 A. I'm still reading this, but what I've seen so
7 far leads me to believe that their desk audits are
8 not as expansive.

9 Q. All right. But have you seen anything that
10 suggested to you that they couldn't be as expansive?

11 MR. LINVILLE: Object to the form.

12 A. Sitting here, I'm not prepared to say no, they
13 could not be as expansive.

14 Q. And you've indicated the possibility, and I
15 suppose we've all read or heard about such things,
16 where some entity might have two sets of books;
17 correct?

18 A. Yes.

19 Q. And those two sets of books, how would they be
20 more susceptible of discovery with a field audit than
21 they would be with a desk audit?

22 And I presume that if one set's fraudulent and
23 one set's the real ones, that the real ones which
24 would prove the fraud are hidden away somewhere; are
25 they not, usually?

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1 MR. LINVILLE: Object to the form.

2 Q. Otherwise, why have two sets of books?

3 MR. LINVILLE: Object to the form. That's
4 three questions asked.

5 A. Depending upon the circumstances of the case,
6 for example, if you use a fraudulent -- for example,
7 if you believe that something is fraudulently going
8 on and that the provider, for example, might destroy
9 evidence, you can go out and see the books. Now I
10 suppose theoretically the other books may not be
11 found, given your hypothesis. I won't say that's not
12 within the realm of possibilities.

13 Q. Well is a field audit necessarily an unannounced
14 field audit?

15 A. It is not necessarily unannounced.

16 Q. Do you know whether or not there are any
17 impediments in Minnesota to doing unannounced field
18 audits of nursing homes?

19 MR. LINVILLE: Object to the form.

20 A. Again, in all this material that I have just
21 read, I have read some language about due process, et
22 cetera, but I cannot remember what I was reading.

23 Q. Okay. You as an old -- as a former -- excuse
24 me, I didn't mean to put it that way.

25 As a former prosecutor, you would agree,

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1 wouldn't you, that if a particular nursing home were
2 the target in a criminal investigation, the preferred
3 procedure would be to use a search warrant and not to
4 make an unannounced audit visit; wouldn't it?

5 MR. LINVILLE: Object to the form.

6 Q. For purposes related to the Fourth Amendment?

7 A. I would agree that an unannounced is not the
8 norm.

9 Q. On page 20 in the first paragraph, I think it's
10 the sixth line down, the last two words on the right
11 are "In my...", and it begins the sentence that says,
12 "In my experience, desk audits are not a
13 particularly effective means of preventing fraud and
14 abuse." Would you tell me what your experience is
15 that leads you to have an opinion on that subject?

16 A. Yes. That experience is referring to when I was
17 a prosecutor and when I looked at desk audits and
18 found just what I'm saying, that when desk audits
19 were done, they were not as effective as field
20 audits.

21 Q. Okay. Anything else that forms the basis for
22 that statement?

23 A. Well some things that I have seen in the past
24 when desk audits were done, they were done by a
25 group -- sometimes it's done by an outside entity

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1 which is paid to do desk audits by audit, per audit,
2 and the more audits you do, the more money you're
3 paid, and so the issue becomes quality or quantity.

4 Q. Well you have no reason to believe that that
5 principle applies to Minnesota in any way; do you?

6 A. No, I'm not sitting here saying that applies to
7 Minnesota. I don't know.

8 Q. All right.

9 A. But I'm not saying that at this moment.

10 Q. All right. Any other reason --

11 A. But the question was in my experience.

12 Q. Right. Well we're talking about Minnesota here
13 now. You know that. And your experience may be
14 elsewhere, but I want to know what about your
15 experience leads you to believe that Minnesota desk
16 audits are not a particularly effective means of
17 preventing fraud and abuse.

18 Are you saying that in your experience
19 Mississippi desk audits were not?

20 A. I'm saying that in my own personal
21 experience, --

22 Q. Yes.

23 A. -- yes, it was that way in Mississippi.

24 Otherwise, it's not particularly --

25 Q. All right. Let's go to the next paragraph. You

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1 say that, "Finally, even if DHS had met the statutory
2 requirement of field auditing 25 percent of nursing
3 homes -- which it did not -- that, too, is an
4 imperfect fraud and abuse detection system. If a
5 nursing home is audited only once every four years,
6 there can be insurmountable statute of limitations
7 problems which prevent full recovery of Medicaid
8 payments." Have I got that basically right?

9 A. "Overpayments."

10 Q. Pardon?

11 A. "Overpayments."

12 Q. All right. But you don't know what the
13 Minnesota statute of limitations is on such
14 recoveries. That's what you told me a while ago;
15 correct?

16 MR. LINVILLE: Object to the form. I think
17 your prior question dealt with fraud.

18 MR. McKENNA: All right. Do you --

19 I think I went broader than that, but we'll do
20 it right now.

21 Q. Do you know what the statute of limitations is
22 with respect to any action that might be relevant to
23 a recovery of Medicaid fraud and abuse overpayments?

24 A. I don't remember, sitting here, what the statute
25 is. I don't.

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1 Q. So what is the source for your statement here
2 that if a nursing home was audited in Minnesota only
3 once every four years, there would be an
4 insurmountable statute of limitations problem?

5 A. It doesn't say that.

6 Q. Well it says an "insurmountable statute of
7 limitations problems."

8 A. In general, not necessarily in Minnesota, this
9 is a possibility.

10 Q. Well "DHS" refers to the Minnesota Department of
11 Human Services, and the "statutory requirement"
12 refers to the Minnesota statute requirement of field
13 auditing 25 percent of nursing homes and therefore
14 necessarily Minnesota nursing homes; does it not?

15 A. That's correct.

16 Q. Okay. So was this something that the lawyers
17 put in your report that you hadn't had a chance to
18 think through?

19 A. No.

20 MR. LINVILLE: I object to the form.

21 A. I put that in that report myself.

22 Q. All right. And what was your basis for the
23 statement about an insurmountable statute of
24 limitations problem if you don't know what the
25 Minnesota statute of limitations are that might be

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1 affected?

2 MR. LINVILLE: Object to the form.

3 A. I'm not saying there is, I'm saying there can
4 be. And at the time I wrote this I still needed to
5 find out if it is.

6 Q. Okay.

7 A. And I still stand by that. I'm still trying to
8 figure out what is actually going on here.

9 Q. I see.

10 A. I'm not saying it does exist, I'm saying it's a
11 possibility in general.

12 Q. All right. So if I represented to you that the
13 general Minnesota statute of limitations on actions
14 in district courts is six years, would that change
15 your opinion about whether or not there could be an
16 insurmountable statute of limitations problem with an
17 audit only once every four years?

18 MR. LINVILLE: Object to the form.

19 A. Well if the statute of limitations is six years,
20 then that's a possibility.

21 Q. What's a possibility?

22 A. That, you know, this problem would be totally
23 overcome.

24 Q. All right.

25 A. But that's not what all that paragraph means.

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1 Q. Well what else does that paragraph mean?

2 A. Something else that happens when -- and this
3 is -- again I'm basing it on my experience, not
4 Minnesota -- it's not uncommon for nursing homes, for
5 example, to be sold, and it's quite difficult when
6 you go in and try to detect what really happened and
7 there's been a change of ownership, et cetera.

8 Q. Well that's not a statute of limitations
9 problem; is it?

10 A. No.

11 Q. And you don't know anything about whether or not
12 in Minnesota a person who owned or was in charge of a
13 nursing home would continue to be responsible for
14 fraud, do you, that occurred under their aegis even
15 though they sold the nursing home?

16 A. No. And this is still the type of stuff I'm
17 asking to get.

18 Q. Well I'm trying to understand. You make the
19 statement here in four bold lines that an
20 insurmountable statute of limitations problem --

21 A. "Can be."

22 Q. All right. And you did that, you made that
23 statement without even knowing what the statute of
24 limitations were in Minnesota; didn't you?

25 MR. LINVILLE: Object to the form.

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1 A. I said "can be." I didn't say "is."

2 Q. You made that statement without knowing what the
3 statute of limitations was that was applicable to
4 such things; didn't you?

5 A. Yes, and that's why I said "can be."

6 Q. Well if the statute of limitations was longer
7 than four years, it wouldn't be an insurmountable
8 problem; would it?

9 MR. LINVILLE: Object to the form.

10 A. Again I have said "can be." I've not said this
11 is going on in Minnesota. That does not say that.

12 Q. You didn't think that you should be focused upon
13 Minnesota in this report that has to do with
14 Minnesota's litigation against the tobacco industry
15 when you were being asked to assess Minnesota's
16 Medicaid program?

17 MR. LINVILLE: Object to the form.

18 A. I am still assessing Minnesota's Medicaid
19 program.

20 Q. Turning for the moment to page 22 of your
21 report -- actually I guess I need for you to go back
22 to page 21. Am I correct that paragraph G.,
23 consisting of two lines of text, and paragraph H.,
24 consisting of four short paragraphs, are the only
25 reference in your report to fraud and abuse detection

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1 efforts in Blue Cross Blue Shield of Minnesota?

2 A. Paragraph G. does not refer to Blue Cross Blue
3 Shield.

4 Q. You're right. I'm sorry. I misread it myself.

5 So now we're down to paragraph H. on page 22 and
6 its four relatively short paragraphs. Those are all
7 that are in your report related to Blue Cross Blue
8 Shield and its efforts at fraud and abuse detection
9 and prevention; is that true?

10 A. Yes.

11 Q. And essentially what you have said is that their
12 fraud and abuse detection and enforcement efforts
13 were about on a par with respect to effectiveness as
14 the Minnesota programs; true?

15 A. Basically.

16 Q. What effort did you make to compare the
17 staffing, budget, or any other aspect of Blue Cross
18 Blue Shield with similar organizations around the
19 country?

20 A. I did not do any.

21 Q. So you don't know --

22 You didn't know when you wrote this report and
23 you don't know now whether or not Blue Cross Blue
24 Shield of Minnesota's efforts from the standpoint of
25 budget or staffing relative to Medicare -- or excuse

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1 me, fraud and abuse prevention and detection, you
2 don't know whether that was out of the ordinary.

3 A. Compared to other Blue Cross Blue Shield
4 programs.

5 Q. Or similar organizations.

6 A. Blue Cross Blue Shield itself says that they
7 have one of the best programs in the country.

8 Q. All right.

9 A. And that's -- and they talk about programs from
10 the big Blue Cross Blue Shield national. There is
11 some language in the -- in the testimony about that,
12 there are some exhibits that I read. But the purpose
13 was to look at Blue Cross Blue Shield of Minnesota
14 and see what was happening as far as inappropriate
15 payments being made, not how it compared to some
16 other program in the country.

17 Q. Well as I've said to you before, I'm not so much
18 interested in your purpose as I am your opinion about
19 subjects in response to my questions. And my
20 question is: Did you do anything to compare Blue
21 Cross Blue Shield of Minnesota to other similar
22 organizations around the country from the standpoint
23 of its budget, its staffing or other aspects of its
24 effort to detect and prevent fraud and abuse in its
25 program?

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1 A. No. Only what I read from materials I saw.

2 Q. All right. So so far as you know, Blue Cross
3 Blue Shield of Minnesota's statement that they have
4 one of the best programs in the country is
5 probably -- is probably true.

6 MR. LINVILLE: Object to the form. I don't
7 think that's what she said.

8 A. I am saying that that's what Blue Cross says. I
9 don't know the truth of the matter.

10 Q. All right. Well I would --

11 I can't resist pointing out to you that earlier
12 when you saw some national studies that talked about
13 10 percent, you wanted to rely upon not having seen
14 anything to prove that incorrect, and I want to know
15 whether you've seen anything to prove the statement
16 by Blue Cross Blue Shield of Minnesota that they have
17 the best -- one of the best programs in the country
18 to be wrong? You don't have any reason to believe
19 that's not true; do you?

20 A. I have no reason to know, that's correct.

21 Q. So in the first -- the second full paragraph,
22 when you say, "Blue Cross Blue Shield of Minnesota
23 appears to have a small staff," you don't know
24 whether that staff is small in relation to the staffs
25 that are present in other organizations or not; do

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1 you?

2 MR. LINVILLE: Object to the form.

3 A. In comparing -- comparison to other

4 organizations, that's a true statement.

5 Q. Okay. You don't know whether it's two or three

6 or five times as big as those other organizations; --

7 MR. LINVILLE: Object to the form.

8 Q. -- do you?

9 A. I do not, that's correct.

10 Q. And in the second line of that paragraph when

11 you say, "The program integrity unit appears to have

12 undertaken few proactive investigations," you don't

13 know whether or not the number of proactive

14 investigations is larger or smaller than other

15 organizations of similar kind around the country; do

16 you?

17 A. That's correct.

18 Q. What do you mean by "proactive investigations?"

19 A. I mean investigations of the type that Blue

20 Cross Blue Shield itself described. That's when they

21 went out and did audits of different providers, seems

22 like they were clinics and something else. There was

23 a period there when they went out and did audits on

24 their own. That I consider to be proactive.

25 Q. And in the last sentence in the second paragraph

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1 beginning with the words "Most of their activity...",
2 you say, "Most of their activity was limited to
3 responding to complaints received from subscribers or
4 from other departments within Blue Cross Blue Shield
5 of Minnesota." Is that a correct statement of your
6 language in that sentence?

7 A. That's a correct statement of my language.

8 Q. And are you referring there to the fact that
9 they worked on tips from subscribers and other
10 departments as to investigations to be done?

11 A. As I remember what I read about Blue Cross, yes,
12 they were -- they acted upon referrals from other
13 parts of their organization.

14 Q. All right. So "referrals" would be a more
15 accurate statement than "complaints;" would that be
16 true?

17 A. I think it's true that it could be both.

18 Q. Well let me tell you what my problem was. When
19 you say "Most of their activity was limited to
20 responding to complaints received from subscribers or
21 from other departments within Blue Cross Blue Shield
22 of Minnesota," that makes it sound like they were
23 kind of a customer service bureau, when in fact what
24 they were trying to do was to follow up on tips about
25 possible wrongdoing; right?

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1 A. Program Integrity, yes.

2 Q. Right. There weren't complaints about, "Hey, I
3 didn't get my card" or "Somebody took my parking
4 space" or "The doctor was rude to me," they were
5 things about Program Integrity that they were
6 following up; right?

7 A. If I remember what I've read correctly, there --
8 there were complaints that came in to that department
9 that were not necessarily related to Program
10 Integrity. Now whether they -- I'm not sure that
11 they followed those up, but I think that there were
12 some -- there were some that came in.

13 Q. Well you understand that what they were telling
14 you was that their activity was following up upon
15 tips and referrals with respect to Program Integrity,
16 not dealing with the run-of-the-mill complaints that
17 come from subscribers or other departments; right?
18 You knew that's what they were saying.

19 A. As I remember they did receive, like, complaints
20 for perhaps some -- I'm sorry -- from subscribers
21 because of things like -- I'll have to go back and --

22 But I agree with you that perhaps I should have
23 added the word "referrals" in there.

24 Q. And if they were working on referrals or tips as
25 to wrongdoing, that would be an appropriate use of

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1 their time; wouldn't it?

2 A. Yes.

3 Q. Because in a system where you're trying to
4 detect and prevent fraud, oftentimes a subscriber is
5 going to say, because they saw some document, that
6 doctor overcharged, and that would be a worthwhile
7 tip to follow up; wouldn't it?

8 A. I think so.

9 Q. Or that doctor didn't do that that he billed you
10 for, you'd want them to follow up on that; wouldn't
11 you?

12 A. I would.

13 Q. Now in the third paragraph, when you speak about
14 proactive provider audits and you then refer to a
15 range of error rates, now you know that you're
16 talking there about patient -- I mean, excuse me,
17 provider education programs, not fraud detection
18 audits; don't you?

19 MR. LINVILLE: Object to the form.

20 A. I know that that is how Blue Cross Blue Shield
21 categorized those audits.

22 Q. Okay. Well you're not suggesting they went out
23 and did what we were talking about a while ago as a
24 field audit on somebody and came up with 60 to 90
25 percent error rates on what they were doing; are you?

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1 A. I am suggesting that according to what I saw,
2 they went out and looked at records to see if things
3 had been done correctly and still came up with these
4 error rates.

5 Q. Now here you're talking about, again, most
6 explicitly, fraud and abuse, with abuse including
7 errors that are innocent ones like using the wrong
8 key stroke or running the wrong code somewhere;
9 aren't you?

10 A. Yes.

11 Q. Okay. You do acknowledge in the last sentence
12 of that paragraph that "The emphasis of these
13 provider audits appeared to have been on 'educating'
14 the providers to improve their future billings;"
15 right?

16 A. Yes.

17 Q. So you're not --

18 A. That's what I got from reading.

19 Q. You're not criticizing them being out there
20 saying they're being nice to these people cheating
21 the system; are you? You're saying what was going on
22 here was an effort to educate the clerical staff of
23 these providers to submit claims properly; right?

24 MR. LINVILLE: Object to the form.

25 A. I am saying that what Blue Cross and Blue Shield

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1 said it was doing was provider audit to help educate
2 providers to improve the future billings.

3 Q. Right.

4 A. I'm also saying that when they did this, they
5 discovered quite often error rates that are quite
6 high, and apparently the fact that that existed made
7 no difference.

8 Q. Okay. Well are you sitting here telling me that
9 this is an indication that there is 60 to 90 percent
10 fraud and abuse in the Blue Cross and Blue Shield of
11 Minnesota system?

12 A. I am saying that there may be payments that
13 should not have been made, I mean, based on -- if
14 there were --

15 If these were the error rates that were in the
16 forms, then there may be payments that should not
17 have been made. They may not be fraud, no.

18 Q. Well we spent a lot of time waltzing around the
19 definition of fraud and abuse. I don't want to do
20 that again.

21 A. Okay.

22 Q. But using your definition of fraud and abuse,
23 are you saying that there is a 60 to 90 percent rate
24 of fraud and abuse in the Blue Cross Blue Shield of
25 Minnesota system?

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1 A. No, I'm not saying that.

2 Q. All right. Now so what you are saying is that
3 there are potentially a high number of clerical
4 errors that are made in filling out a form, and that
5 makes up the bulk of that 60 to 90 percent; isn't
6 that true?

7 MR. LINVILLE: Object to the form.

8 A. As I sit here now, I'd have to go back and look
9 at those to see what the different mistakes, or
10 whatever you want to characterize them, were, but it
11 was quite evident in the testimony that there were
12 error rates and that they were quite high in some of
13 them. And there was also testimony that some of
14 these were to be reaudited in hopes that those error
15 rates would have gone down. That didn't necessarily
16 happen. So I'm not sure about --

17 I am sure I'm not sitting here telling you that
18 I'm saying that the error rate or the fraud rate,
19 whatever you call it, is 60 percent. I'm not saying
20 that.

21 Q. Actually you say 60 to 90 percent. But you're
22 not saying that that's the fraud and abuse rate.

23 A. No. I'm saying those are the rates that showed
24 up in those audits.

25 Q. All right. So if they're not fraud and abuse,

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1 what are the components of that 60 to 90 percent?

2 MR. LINVILLE: Object to the form.

3 Q. Do you know?

4 A. The components of those -- again we're going
5 through this abuse thing; they're perhaps payments
6 that should not have been made.

7 Q. So by the definition that you offered earlier,
8 they are fraud and abuse; is that right?

9 A. No, I never said they were fraud.

10 Q. Fraud and abuse.

11 A. They may -- they may have contributed to
12 payments that should not have been made. I'm not
13 saying that they were fraudulent.

14 Q. Well I didn't ask you if they were fraudulent.
15 I referred to fraud and abuse in the same catch
16 phrase that you've used repeatedly in your report,
17 and you say fraud and abuse includes clerical errors
18 and payments that shouldn't have been made but which
19 came about through innocent error, and I want to know
20 if that's not what this 60 to 90 percent is. What is
21 the 60 to 90 percent?

22 MR. LINVILLE: Object to the form.

23 A. I believe you're mischaracterizing my
24 territory -- "territory" -- testimony to say that I
25 have said inappropriate payments from clerical errors

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1 were fraud.

2 Q. I didn't say that. I didn't say that now or at
3 any time in this deposition.

4 A. What did you just say?

5 Q. "Fraud and abuse" is the phrase that you've used
6 over and over in your report and throughout your
7 testimony here, and you told me yesterday that abuse
8 included -- most specifically and repeatedly you told
9 me it included clerical errors and payments which
10 shouldn't have been made through innocent mistakes.

11 MR. LINVILLE: Counsel, when we -- when we
12 come to a breaking point here, we're a little over
13 six hours now.

14 MR. McKENNA: Well we're not there now.

15 MR. LINVILLE: Okay.

16 A. And I still say this could constitute abuse.

17 Q. I understand that. And I -- and given that
18 definition of fraud and abuse, what else --

19 A. That is not a definition of fraud and abuse.
20 Fraud and abuse are two different things.

21 Q. All right. The 60 to 90 percent includes some
22 fraud, but you don't know how much; true?

23 A. The 60 to 90 percent --

24 MR. LINVILLE: I object to the form of the
25 question.

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1 A. -- are error rates that were discovered in these
2 audits.

3 Q. Right.

4 A. Which I would have to go back and -- I don't
5 think they ever calculated it, I would have to go
6 back to see, because I don't remember as we sit here
7 whether they turned that in to amount of dollars that
8 may have been inappropriately paid. But I'm not
9 claiming that those dollars were fraudulent.

10 Q. I'm not saying that you did, --

11 A. And I am not putting --

12 Q. -- but you have told me -- you told me yesterday
13 that the issue you were commissioned to study here,
14 the instance of fraud and abuse in the Medicaid
15 system and in Blue Cross Blue Shield in Minnesota,
16 that that included two concepts, on the one hand
17 fraud, but in addition to that, abuse, which you
18 specifically and repeatedly defined as including
19 clerical errors and other payments which shouldn't
20 have been made but which came about as a result of an
21 innocent mistake. Now taking those two things
22 together, that's what this 60 to 90 percent is, --

23 MR. LINVILLE: Object to the --

24 Q. -- or is there something else, --

25 MR. LINVILLE: Object to the form.

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1 Q. -- something that doesn't meet the definition of
2 either fraud or abuse as you mean it that goes into
3 this 60 to 90 percent?

4 A. The 60 to 90 percent error rate, I will have to
5 go back and look again because I don't remember the
6 types of error rates that there were. There is
7 discussion in testimony about whether that caused
8 inappropriate payments to be made. I don't remember
9 sitting here. I'd have to go back and look at it.
10 My point is if there are error rates that high, that
11 may translate, yes, into inappropriate payments, but
12 I'm not characterizing them nor trying to
13 characterize them as fraud.

14 Q. And I am not accusing you of that. You're
15 fighting with a straw person there. I have never
16 said anything like that. I have taken the term
17 "fraud and abuse," which has appeared repeatedly
18 throughout this deposition and appears on every page
19 of your report, as being the two phenomena which
20 together you were supposed to assess as a part of
21 your work in this case. All right? I've not accused
22 you of saying that was 60 to 90 percent of fraud, but
23 60 to 90 percent of both fraud and abuse as you've
24 defined that latter term. True?

25 MR. LINVILLE: Object to the form.

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1 A. It's a 60 to 90 percent error rate.

2 Q. All right.

3 A. Now we have to go back and look at what the
4 errors actually were, and sitting here I'm not
5 prepared to tell you because I don't remember --

6 Q. Okay.

7 A. -- whether those errors translated into payments
8 that should not have been made.

9 Q. All right. Now at the time that you made out
10 this report, you were obviously not concerned
11 about -- were concerned about not doing something
12 that was misleading; correct? So you wouldn't have
13 put 60 to 90 percent in here in connection with an
14 assessment of fraud and abuse unless you felt that it
15 was connected somehow meaningfully to inappropriate
16 payments; would you?

17 MR. LINVILLE: Object to the form of the
18 question.

19 Q. Or were you just throwing around a number
20 without knowing what it meant in this context?

21 A. No, I was not throwing around a number. I'm
22 throwing around -- out a number --

23 I'm not throwing out a number. I've included
24 this number because it came from Blue Cross Blue
25 Shield itself --

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1 Q. Yes?

2 A. -- showing that they had done provider

3 audits, --

4 Q. Yes.

5 A. -- and in doing provider audits they discovered

6 in some instances an error rate of 60 to 90 percent.

7 Q. Right.

8 A. Now the next question is: Did those error

9 rates, whatever they are, --

10 Q. Yes.

11 A. -- result in inappropriate payments made by Blue

12 Cross.

13 Q. Yes. Maybe I should let you ask the question.

14 And I'm saying to you that your inclusion of

15 that statistic in this report, did you not mean to

16 imply that that somehow was -- that that 60 to 90

17 percent number was related to inappropriate

18 payments? Is that why you included it? Because if

19 it wasn't, what's the relevance of throwing it in

20 there?

21 MR. LINVILLE: Object to the form.

22 A. The relevance of throwing it -- including it is

23 that, for example, Blue Cross itself said that in a

24 year or two they would go back and reaudit some of

25 these providers to see if they indeed had improved

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1 their billing based on this. Some of those audits
2 were never conducted, as I remember, and some of them
3 were conducted and we -- and there still were fairly
4 high error rates. So my point for including it is
5 there may very well have been inappropriate billing,
6 and that in the following-up period when --

7 I mean the purpose of this was to stop the
8 inappropriate billing. What Blue Cross Blue Shield
9 itself said it planned to do did not occur --

10 Q. Okay.

11 A. -- after.

12 Q. So neither you nor Blue Cross Blue Shield is
13 saying that 60 to 90 percent of inappropriate
14 payments took place based upon any provider audit at
15 any time; correct?

16 A. I think what we're both saying is that there was
17 a high level of error rate. What you have to do is
18 translate those error rates into inappropriate
19 payments.

20 Q. Okay. I think you know enough by now to know
21 that I'm going to go back and ask my question again
22 to see if you'll answer it.

23 Neither you nor Blue Cross Blue Shield is saying
24 that 60 to 90 percent of inappropriate payments took
25 place based upon any provider audit at any time;

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1 isn't that true?

2 MR. LINVILLE: Object to the form of the
3 question.

4 Q. Is that -- is that true?

5 (Witness reads computer screen.)

6 A. I think that's a fair statement. I think we're
7 both saying you have to see.

8 Q. All right. So in trying to apply our knowledge
9 of the system and our common sense to figure out what
10 this 60 to 90 percent means, it's very likely, isn't
11 it, that a very high percentage of that 60 to 90
12 percent has to do with simple, innocent, maybe even
13 irrelevant clerical errors which were found when the
14 forms were examined; right? And without much more
15 information, you can't say that it has anything to do
16 with improper payment.

17 A. If I remember reading testimony correctly, there
18 is testimony in a deposition that at least discusses
19 this and the fact that there may have been at least
20 an effect on the amount of payment that was made as a
21 result. I will have to go back and find the
22 testimony.

23 Q. In the last line in that paragraph you put the
24 word "educated" in quotes. Were you trying to imply
25 that this wasn't really educating the providers?

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1 A. I was putting in quotes the word that they used,
2 which is "educated."

3 Q. Yes.

4 A. That's why --

5 Q. They also used the word "providers," but you
6 didn't put that in quotes; did you?

7 Were you implying that it wasn't really
8 educating the providers?

9 A. No.

10 Q. Or were you somehow suggesting that -- that
11 instead of educating them, they ought to have been
12 investigating them?

13 A. No.

14 Q. You understood, didn't you, that all that was
15 involved here is that they went out and they looked
16 at a bunch of providers to see whether the forms were
17 being filled out right, and they found a lot of
18 instances when they weren't, as many as 60 to 90
19 percent, but that that number has nothing to do with
20 improper payments or fraud or abuse? You know that;
21 don't you?

22 MR. LINVILLE: Object. Object to the form.

23 A. No, I do not know that.

24 Q. Okay. Now in the last sentence you say, "Blue
25 Cross Blue Shield of Minnesota employees appeared

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1 reluctant to recognize the implications of these
2 error rates as applied against the overall level of
3 payments made to the audited providers."

4 Now are you suggesting that these error rates
5 ought to have been applied against the overall level
6 of payments made to audited providers to draw the
7 conclusion that there was 20 to 30 percent fraud and
8 abuse or 60 to 90 percent fraud and abuse?

9 A. No, I'm not trying to say --

10 I am not trying to say in here at all that based
11 on these audits I'm prepared to say there were 60 to
12 90 percent.

13 Q. No.

14 A. I'm not. That has nothing to do with --

15 Q. Thank you.

16 What I'd like to know is: Were you trying to
17 say that these error rates ought to be --

18 When you say it should be applied against the
19 overall level of payments, how? Applied how?

20 MR. LINVILLE: To the audited providers.

21 MR. McKENNA: No. That doesn't make any
22 sense. Please don't correct my question.

23 MR. LINVILLE: Wait, counsel. Counsel, you
24 were reading something here.

25 MR. McKENNA: Yes, I was.

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1 MR. LINVILLE: You read a piece of a
2 phrase.

3 MR. McKENNA: That's true, I did.

4 MR. LINVILLE: You didn't read the rest of
5 the phrase.

6 MR. McKENNA: I don't have to read the
7 whole phrase. I can ask the questions the way I
8 want.

9 MR. LINVILLE: Then I object. It's an
10 improper question.

11 Q. When you say these error rates are supposed to
12 be applied against the overall level of payments,
13 what did you mean by that? Applied how? For what
14 purpose?

15 A. If error rates included in a -- the 20 to 30
16 percent or 60 to 90 percent, whichever range you want
17 to use, if some of those error rates resulted in
18 improper payments, particularly a year or two later
19 when supposedly there will be audits done to make
20 sure that this was not reoccurring, and in instances
21 where the audits were not even done, I mean if
22 inappropriate payments were made to these providers
23 for whatever reason, nothing was ever done about it.

24 Q. Okay. And that's what your statement is now,
25 that nothing was ever done about it?

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1 A. Well perhaps "nothing" is too broad. There
2 is -- but there is testimony that, for example, the
3 Program Integrity was perhaps aware of this. Again
4 there is -- there is the testimony that the follow-up
5 audits that were intended to be done did not all take
6 place.

7 Q. Well I'm still trying to get an answer to my
8 question. What did you mean "applied against the
9 overall level of payments?" Was somebody supposed to
10 take this number and figure somehow or another that a
11 comparable percentage of the overall payments was
12 suspect in some way? What did you mean by that
13 phrase "applied against the overall level of
14 payments?"

15 A. I mean that if you, Blue Cross Blue Shield, --

16 Q. Right.

17 A. -- identified that out of these -- let's say the
18 60 to 90 percent error rate, or I don't care, the 20
19 to 30 percent, let's say that you discovered that as
20 a result of those errors there were 3,000 dollars'
21 worth -- 3,000 dollars paid inappropriately to me,
22 that I'm not saying you should say 30 to -- 20 to 30
23 percent of what I was paid or 60 to 90 percent of
24 what I was paid, but if you have identified that I
25 was paid 3,000 dollars erroneously, then you know

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1 that I was paid 3,000 dollars erroneously.

2 Q. But you just told me a while ago that these 60
3 to 90 percent numbers, and for that matter the 20 to
4 30 percent, did not mean necessarily that there were
5 erroneous payments.

6 MR. LINVILLE: Object to the form.

7 A. And if you listen to what I just said to you, --

8 Q. Yes.

9 A. -- I'm saying to look at the claims, the -- the
10 errors --

11 Q. I assure you I'm listening to what you say.

12 A. If you take the errors which are identified,
13 whatever the percentage, --

14 Q. Yes.

15 A. -- and go through the errors one by one, --

16 Q. Yes.

17 A. -- and you discover dollars that were paid that
18 should not have been --

19 Q. Yes.

20 A. -- because of this error.

21 Q. Yes.

22 A. Let's even go take the hypothesis of a 90
23 percent error rate.

24 Q. Uh-huh.

25 A. But when you looked at those rates you

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1 discovered that 10, not 10 percent, but 10 errors
2 resulted in an overpayment of dollars, then you know
3 how many dollars I was paid erroneously. That's what
4 I'm saying.

5 Q. All right. And therefore you are saying that
6 nobody ever did anything about those 60 to 90
7 percent, to check whether or not those 60 to 90
8 percent of errors resulted in improper payments; is
9 that your testimony?

10 MR. LINVILLE: Object to the form.

11 A. Again I will have to go back to the testimony.
12 There is some language about discussing that in the
13 testimony --

14 Q. Well --

15 A. -- but --

16 Q. -- if that was an opinion you formed, you don't
17 know it now; is that right? You need to go back and
18 re-examine it.

19 MR. LINVILLE: Object to the form.

20 A. It is my opinion that the follow-up that should
21 have occurred didn't.

22 Q. Okay. And that follow-up would have been to
23 examine these errors to determine whether any one of
24 them resulted in improper payment.

25 MR. LINVILLE: Object to the form.

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1 Q. Is that what you're saying?

2 A. And go beyond that and recover it.

3 Q. Okay. And your testimony is that that didn't
4 happen.

5 A. To the best of my knowledge, that's not what
6 happened.

7 Q. Is that what you meant when you said they
8 appeared reluctant to recognize the implications in
9 these error rates?

10 A. Yes, that is what I meant.

11 MR. McKENNA: Did you want to take a break
12 now? You asked for one some time ago. I'll be glad
13 to do it now.

14 MR. LINVILLE: Yeah. Okay.

15 (Recess taken.)

16 BY MR. McKENNA:

17 Q. When you refer in your report to prior -- to
18 reviewing a claim before it's paid by a human being,
19 you're not suggesting that that ought to be the
20 system that's adopted in Minnesota. You haven't
21 formed a conclusion about that; is that right?

22 MR. LINVILLE: Object to the form.

23 A. No, I'm not --

24 Q. Do you know any -- sorry. Had you finished your
25 question -- your answer?

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1 A. No, I --

2 That's not a recommendation I have made in this
3 report.

4 Q. All right. Do you know a program in any of the
5 states or territories where a higher percentage of
6 claims is reviewed by a human being than is the case
7 in Minnesota?

8 A. I haven't actually tried to look at anything
9 like that, so no, I do not. I haven't tried to
10 compare that.

11 Q. Do you know whether or not the edits that are
12 employed in the Minnesota computer -- Medicaid
13 computer system, whether those attempt to focus upon
14 the common types of fraud that you've cited in your
15 report?

16 A. I would have to go back and look at specific
17 edits, but I have no reason to believe that, as we
18 sit here, that they're not trying to edit as much as
19 possible.

20 Q. When one of these edits produces a positive
21 result, do you have any idea what happens to the
22 claim at that point in Minnesota's system?

23 A. What do you mean "a positive result?"

24 MR. LINVILLE: Yeah. Object to the form.

25 Q. When the claim is identified in some way as

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1 being an outlier, as you referred to earlier.

2 MR. LINVILLE: Object to the form.

3 A. The -- any -- Medicaid has --

4 I mean there are options. There's more than one
5 thing to could happen.

6 Q. I'm talking about the Minnesota program now.

7 A. I know. But Minnesota has options too, as I
8 remember.

9 Q. I just want to know what the Minnesota options
10 are. Tell me what they are.

11 A. Well if you have --

12 If they get a report, an outlier report for
13 example, first they will probably look at -- at least
14 from my understanding of the testimony, they look at
15 basically standard deviations and see how far from --
16 far out they are. That's one possibility. They
17 can -- I mean there -- there are many options. They
18 can request a claims review of all of the claims.
19 They can deny a claim. They can --

20 There are different options.

21 Q. Well okay. Is it your understanding that once
22 the computer -- once one of those edits is triggered,
23 one of the things that it was programmed to look for
24 it finds, is it your understanding that then a human
25 being looks at that?

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1 MR. LINVILLE: Object to the form. And I
2 think you have to be real clear because I think there
3 may be some confusion about what computer programs
4 and what edits or logic you're talking about. But I
5 just want the record to be clear.

6 McKENNA: How could there be? I mean there
7 aren't two computer programs; there's one.

8 MR. LINVILLE: No, there's a computer
9 program that identifies outlier reports, and there's
10 a discussion about that, and there's a computer
11 program that does claims processing, and I think
12 that's getting somewhat jumbled here.

13 MR. McKENNA: Well I think you're the only
14 one that doesn't seem to understand it. I don't
15 think anything is jumbled.

16 Q. You understand that when a claim comes in on
17 Medicaid, that it's put into the computer and the
18 computer runs a number of front-end edits on it, as
19 many as a thousand, to determine whether or not there
20 is some aspect of that claim that meets a criteria
21 that has been decided upon when the computer was
22 programmed. You know what I'm talking about?

23 A. Yes. The computer --

24 Q. Some of the more simple ones might be if it
25 seems to be identical to an earlier claim that was

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1 paid, for example; right?

2 A. That's a possibility, yes.

3 Q. Okay. And when the computer determines that one
4 of the things it was taught to look for is present,
5 then that file is, as they say, pended. You
6 understand that?

7 MR. LINVILLE: Object to the form.

8 A. Yes, that claim can be pended.

9 Q. All right. And once it's pended, does a human
10 being then look at it?

11 A. Well theoretically they could send it back for
12 denial. This is what I'm trying to say, they can do
13 several things.

14 Q. Right.

15 A. That's one of them, just deny it.

16 Q. And the program is -- perhaps I didn't --

17 I wasn't trying to mislead you. I think we both
18 know the program is designed that some claims -- some
19 edits produce an automatic denial.

20 A. Right.

21 Q. Right. And the computer spits out a denial;
22 right?

23 A. Right.

24 Q. Without a human being seeing that.

25 A. Right.

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1 Q. Until the provider opens the envelope; right?

2 A. Right.

3 Q. Okay. But other pended claims are reviewed by a
4 human being; true?

5 A. Yes, there are pended claims that are reviewed
6 by human beings, as I understand it.

7 Q. And essentially is it true, with respect to all
8 of these edits, that any claim that is -- that
9 triggers one of those edits is not paid until that
10 edit is resolved in one way or another?

11 MR. LINVILLE: Object to the form.

12 A. If the computer spits something out and does not
13 deny it, then it is my understanding that they try to
14 check to see what the problem is.

15 Q. Before payment.

16 A. At least in --

17 As I remember, in many cases, yes, that's what
18 they do.

19 Q. And if --

20 Assuming that it's true that there are 997 edits
21 in this claims processing system, there are 997
22 different circumstances, then, that might produce at
23 least a delay in the payment of the claim; isn't that
24 true?

25 MR. LINVILLE: Object to the form.

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1 A. There are a huge number of possibilities of
2 delaying paying a claim, that is correct.

3 Q. Do you have some problem with my saying that
4 assuming that there are 997 edits, that there are
5 997 --

6 A. No.

7 MR. LINVILLE: Object to the form. I just
8 wanted you to let him finish before you answer so you
9 know exactly what the question is.

10 Q. Sure. If you make the assumption that there are
11 997 edits, then there are at least 997 ways that this
12 gets sidetracked before payment; true?

13 MR. LINVILLE: Object to the form.

14 A. Assuming that a situation doesn't exist where
15 they have apparently done at times, which is turn off
16 an edit or announce -- put a code in that says
17 circumvent the edit or whatever, then yes, there are
18 however many possibilities.

19 Q. Okay. And is it also your understanding that
20 this claims processing system continues to massage
21 and analyze those claims to identify patterns with
22 respect to certain providers or beneficiaries that
23 meet criteria that are indicative of fraud or abuse?

24 MR. LINVILLE: Object to the form.

25 A. It's my understanding that the ability exists to

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1 look at, as I've already called them, outliers to
2 check what they call patterns of over-utilization.
3 That ability exists.

4 Q. And is it also possible, as was your experience
5 in Minnesota, for an investigative agency to ask for
6 a special run or a special analysis of data by the
7 computer to single out a certain provider, for
8 example, and have a look at all of his
9 hysterectomies, for example?

10 MR. LINVILLE: You may have misspoke on
11 that question.

12 MR. McKENNA: Yes.

13 Q. It is your --

14 It's possible, as was your experience in
15 Mississippi, for an investigative agency to ask for a
16 special run or a special analysis of data by the
17 computer to single out a certain provider, for
18 example, and have a look at all of his
19 hysterectomies, for example.

20 A. It's my understanding that there is the ability
21 to generate many different types of reports by --
22 by --

23 Yes.

24 Q. And all of these edits that we talked about
25 before can --

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1 And the 997, assuming there are that many, those
2 are done before any payment is made; aren't they?

3 A. Yes. The edits that will kick out the claims
4 are done prior.

5 Q. And it's your understanding that many of those
6 result in a payment prior to the time that they are
7 resolved either by a denial or a human being looking
8 at them?

9 MR. LINVILLE: Object to the form.

10 A. As sit here now, I believe that is the case. I
11 have --

12 I need to go back, I think, to read more
13 testimony, but I believe that's a fairly correct
14 statement.

15 Q. Now you understood when you did this report that
16 the litigation had to do with a claim over medical
17 expenditures regarding illnesses which arguably are
18 caused by smoking. You understood that.

19 A. Yes.

20 Q. And that that sort of all by itself largely
21 excluded the AFDC component of Medicaid; didn't it?

22 A. I believe so, yes.

23 Q. All right. And so primarily what we were --
24 what we're talking about are --

25 You can refer to page six of your report where

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1 you talk about the classes of beneficiaries --

2 categories of beneficiaries.

3 A. Okay.

4 Q. Mostly what we're talking about is the

5 low-income aged and the low-income disabled; true?

6 MR. LINVILLE: Object to the form of the
7 question.

8 A. I believe that is so.

9 Q. Okay. Now taking the issue of recipient or
10 beneficiary fraud and abuse, the primary issue with
11 respect to these populations that might be relevant
12 to tobacco-related illnesses would be whether or not
13 their income met the proper standards for
14 eligibility; wouldn't it?

15 MR. LINVILLE: Object to the form.

16 A. I don't quite --

17 I didn't understand that question.

18 Q. Sure. Let me come back at it the other way.

19 Since we're talking about tobacco-related
20 illnesses here, people are not going to fake a
21 condition that will lead to them getting
22 chemotherapy, for example; right?

23 MR. LINVILLE: Object to the form.

24 A. I think that's a true statement.

25 Q. Right. And so mostly it's not going to be like

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1 some drug-seeking behavior that might be prevalent in
2 other aspects of the Medicaid program; true?

3 MR. LINVILLE: Object to the form.

4 A. I'm not sure what you asked me.

5 (Witness reads computer screen.)

6 A. What's not going to be like some drug-seeking
7 behavior that might be prevalent?

8 Q. The kind of fraud that would be involved in an
9 analysis of that portion of the plaintiffs' damages
10 in this case which are improperly inflated due to
11 fraud and abuse.

12 MR. LINVILLE: Object to the form of the
13 question.

14 Q. Well if you're puzzled, let me try again.

15 A. Please.

16 Q. We are --

17 You realize that the state of Minnesota and Blue
18 Cross Blue Shield are claiming damages for
19 expenditures which had to be made because of
20 tobacco-related illnesses under various aspects of
21 Minnesota law. You understand that.

22 A. Yes, I understand that.

23 Q. And those tobacco-related illnesses implicate
24 only a certain couple of categories of recipients of
25 Medicaid. We talked about that. It's going to be

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1 primarily the low-income aged and the low-income
2 disabled; true?

3 MR. LINVILLE: Object to the form.

4 A. I don't know that to be true.

5 Q. Okay. What other populations did you understand
6 would be involved in the damages picture with respect
7 to tobacco-related illnesses?

8 MR. LINVILLE: Excuse me. There may have
9 just been a confusion in the way you asked that
10 question.

11 (Witness reads computer screen.)

12 A. What I have looked at is the Medicaid population
13 and where dollars are going, et cetera. I have not
14 taken into consideration what the illnesses are, I
15 mean the diagnoses or anything. I strictly looked at
16 the numbers of the program and where -- where the
17 dollars are going.

18 Q. So you made no effort in your analysis to try to
19 more particularly study the extent to which fraud and
20 abuse may have inappropriately affected the damages
21 for tobacco-related illnesses; is that what you're
22 telling me? You studied the program as a whole.

23 A. Correct.

24 Q. And do you not believe that there may be some
25 significant differences in the rates of fraud and

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1 abuse among the low-income aged and the low-income
2 disabled as opposed to the fraud and abuse in the
3 AFDC component of Medicaid?

4 MR. LINVILLE: Object to the form.

5 (Witness reads computer screen.)

6 A. I believe that there are more Medicaid --
7 Minnesota Medicaid dollars going to the low-income
8 aged and the low-income disabled here in Minnesota
9 than there are going to the AFDC population.

10 Q. Why is it you give me that information in
11 response to the question?

12 A. Because I'm not really sure --

13 Q. I didn't ask you anything to do with that.

14 A. I do -- I can't --

15 I do not know sitting here that there are
16 significant differences in the rates of fraud and
17 abuse.

18 Q. At any rate, you didn't attempt to -- to adjust
19 your -- your analysis to take into account the fact
20 that we're talking here about tobacco-related
21 illnesses, you simply studied the whole Medicaid
22 program; is that right?

23 A. That is correct.

24 Q. Do you understand that in Minnesota, as in most
25 states, the number of people who are employed by the

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1 SURS unit or the Medicaid fraud unit and the budget
2 to be applied to that function is a public policy
3 question to be decided in large part by the
4 legislature?

5 A. Yes.

6 Q. And would you agree with me that the extent to
7 which the government of a state chooses to have a
8 more or less vigorous law enforcement effort is a
9 legitimate public policy decision to be reached by
10 that state legislature?

11 A. Yes.

12 Q. In other words, if they want to have a really
13 strict system, that's an appropriate thing for them
14 to decide, and if they want to have a comparatively
15 lax one, that's an appropriate thing as well.

16 MR. LINVILLE: Object to the form.

17 A. I'm not going to speak for what they should be
18 able to do, but I -- it's --

19 Yes, I will agree that it's an issue they should
20 address.

21 Q. It's a legitimate issue for them to address;
22 isn't it? Part of their sovereignty as a state.

23 A. I have no argument with that.

24 Q. Now when we were talking about your definition
25 of abuse as including inappropriate payments made

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1 through clerical errors and innocent mistakes, those
2 kinds of errors can run both ways, can't they,
3 resulting in overpayment or underpayment?

4 A. Theoretically, that's possible.

5 Q. Well was it --

6 Are you suggesting that it isn't true in
7 practice but only in theory?

8 A. I'm not saying it doesn't happen in practice,
9 I'm saying I'm not -- I've not seen anything to
10 indicate a whole lot of it.

11 Q. Well I'll ask you to think this through for a
12 moment. If we're talking here now about clerical
13 errors and innocent mistakes, isn't it equally likely
14 that those errors would result in an underpayment, or
15 an application for underpayment, as it is that they
16 would result in an application for overpayment?

17 MR. LINVILLE: Object to the form.

18 A. I suppose that's theoretically possible, but if
19 that happens, then one would think that --

20 If that happened, the provider or recipient who
21 was, in quotes, underpaid, would be coming back and
22 asking for the rest of it.

23 Q. All right.

24 A. And I haven't seen -- I have seen nothing to
25 tell me that has happened. I just don't know.

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1 Q. You haven't done anything to analyze that
2 component.

3 A. That's correct.

4 Q. All right. You point out in your report that
5 Medicaid is a federally supported program, the exact
6 dimensions of which are determined from state to
7 state.

8 MR. LINVILLE: Object to form. Are you
9 reading from a particular page?

10 MR. McKENNA: No, I'm not.

11 MR. LINVILLE: Okay.

12 A. There is federal participation, there are
13 federal statutes, but each state has some leeway in
14 to how to develop its own program, correct, as long
15 as it meets federal guidelines.

16 Q. Right. And you have pointed out in your report
17 that Minnesota has opted for most of the optional
18 coverages; correct?

19 A. That is my understanding, that's correct.

20 Q. And you're not critical of the state of
21 Minnesota for doing that; are you?

22 A. No.

23 Q. That's an appropriate decision for them to make
24 in terms of how they view their responsibility to
25 their population; true?

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1 A. I agree with that.

2 Q. On page seven of your report at the bottom of
3 the page, you say that one Medicaid concept with
4 special relevance is the concept of beneficiary
5 eligibility. Why is that concept of special
6 relevance to this case?

7 A. Eligibility ben -- I'm sorry.

8 Beneficiary eligibility determines who is
9 eligible, obviously, to receive benefits under
10 Medicaid. I have found, in -- at least in my
11 teaching, that people do not understand that Medicaid
12 is not a program for all poor people. I mean not
13 everybody who's poor can be a Medicaid beneficiary.
14 And so I --

15 That's just learned from experience, it needs to
16 be explained.

17 Q. And that's all you meant by saying it has
18 special relevance to this case?

19 A. It has special relevance to explaining the
20 background of what Medicaid is, which is part of what
21 I was to do.

22 Q. Okay. But nothing in particular to this case as
23 opposed to any other case in which an understanding
24 of Medicare -- I mean, excuse me, Medicaid would be
25 important.

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- 1 A. It's fair to say that the issue of who's
2 eligible is important in any Medicaid case.
- 3 Q. Right.
- 4 A. And to the extent that I -- I analyzed this, I
5 put in here who they are.
- 6 Q. No. I'm just trying to understand why you use
7 the term "special relevance --
- 8 A. Because --
- 9 Q. -- to this case."
- 10 A. -- it's -- it's of special relevance to any
11 case, I believe.
- 12 Q. Okay. On page nine of your report you point out
13 that "In 19" -- second full sentence of the page --
14 "In 1991, for example, Minnesota had the highest
15 annual Medicaid payment per recipient in the nation
16 for its disabled beneficiaries: \$14,788 per disabled
17 recipient compared to a national average of \$7,005;"
18 correct?
- 19 A. Correct.
- 20 Q. You're not suggesting that there's anything
21 wrong with them doing that; are you?
- 22 A. No. That's just saying -- no. That's a fact.
- 23 Q. That shouldn't diminish our damages in this case
24 in any way by itself.
- 25 A. That -- that's put in there as just an analysis

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1 of here's what's happening.

2 Q. Right. But you're not suggesting that that is a
3 defect in Minnesota's handling of the Medicaid
4 program.

5 A. No.

6 Q. Okay.

7 A. I'm just saying this is what is, --

8 Q. And --

9 A. -- or was in '91.

10 Q. What was your point in putting it in here then?

11 A. Giving --

12 I'm trying to show that there -- in Medicaid,
13 that this is still talking about Medicaid, within the
14 context of what -- context of what Medicaid is, and
15 that there are differences in state programs. This
16 was showing that in Minnesota, for example, here are
17 the people who are eligible and receiving high
18 dollars. It may be another state may be different.

19 Q. But you're not suggesting that because Minnesota
20 may pay more per disabled recipient, that that
21 necessarily means they have a more generous spirit
22 with respect to that; right?

23 MR. LINVILLE: Object to the form of the
24 question.

25 A. This was put in there as a snapshot of an

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1 example of who the recipients are, beneficiaries are,
2 and the payment rates. That's what my analysis has
3 shown, that these are who are receiving the most
4 Medicaid dollars in the state of Minnesota.

5 Q. But you're not suggesting that because Minnesota
6 paid more per disabled recipient than the national
7 average by apparently a factor of two, that for some
8 reason that should lead to lesser damages for them in
9 this case. Simply trying --

10 A. My purpose --

11 MR. LINVILLE: Object to form.

12 A. -- in this doesn't have anything to do with
13 damages. It's just showing this is what is.

14 Q. Okay. And similarly the next sentence which
15 says, "Minnesota has significantly higher per
16 recipient Medicaid payments for its aged Medicaid
17 beneficiaries as compared to neighboring states and
18 the national average," that also is your opinion that
19 doesn't have anything to do with damages.

20 MR. LINVILLE: Object to the form of the
21 question.

22 A. This information is here to show you what's
23 happening in Medicaid or has happened in Medicaid in
24 Minnesota. I mean --

25 Q. All I want to know is does it have anything to

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1 do with damages, in your opinion?

2 MR. LINVILLE: Object to the form.

3 A. Damages was not an issue in my mind when I did
4 this. This is simply an analysis of what is.

5 Q. Well does it have anything to do with damages,
6 whether it was in your mind when you did it or not?

7 A. That's not -- that's not something for me to
8 determine. I mean it's not something that I've even
9 considered.

10 Q. That's not --

11 That's not your opinion though.

12 A. What?

13 Q. You don't have the opinion that it has something
14 to do with damages; correct?

15 A. No. My opinion was this is a snapshot of the
16 Medicaid system.

17 Q. And not that your opinion was or is that it has
18 something to do with damages. When you said with
19 respect to the disabled beneficiary payments that
20 your opinion -- that you weren't suggesting that had
21 anything to do with damages, and I simply want you to
22 acknowledge the same thing with respect to the next
23 sentence.

24 A. Okay. I'm just trying to make you understand
25 this was put in here to say here are who are getting

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1 the dollars.

2 Q. Fine. You're not suggesting that Minnesota
3 ought to be limited to the national average with
4 respect to disabled recipients as opposed to the
5 payments it actually made; are you?

6 A. No, I am not saying that.

7 Q. And the next approximately page and a half in
8 which you recite a listing of changes in the Medicaid
9 program, that was simply to show that it is a program
10 that is not static and changes over time. You
11 weren't suggesting that Minnesota had somehow gone in
12 the wrong direction with respect to its Medicaid
13 program; were you?

14 A. No. It is there to show that it is a program
15 that changed over time, just as Medicaid programs do
16 in almost all states.

17 MR. McKENNA: Okay. While I look at my
18 notes, would you calculate how much time I have
19 left?

20 THE REPORTER: Thirty-four minutes.

21 BY MR. McKENNA:

22 Q. During your studies in preparation for giving
23 your opinion, were you able to conclude there was --
24 that there was any form of fraud and abuse that was
25 more prevalent in Minnesota than elsewhere?

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1 MR. LINVILLE: Object to the form.

2 A. I have not made such a conclusion. I'm still
3 reading, but I have -- I have not made that
4 conclusion, no.

5 Q. What are the issues with respect to which you
6 expect to supplement your existing report?

7 A. I'm not sure what all they would be right now.

8 Q. Well are you sure of some of them?

9 A. No. I reserve waiting until I have finished
10 reviewing everything more in depth before I make a
11 statement like that.

12 Q. Have you been saying to me that you haven't --
13 that there's some data you haven't looked at at all,
14 or are you saying that you're re-examining all the
15 information?

16 A. I'm saying I'm re-examining. I've looked at all
17 of it. I received data quite recently, for example,
18 even in the past week, that I need to go back and
19 look through.

20 MR. McKENNA: Why don't we take a short
21 break. I think I'm nearing the end, but --
22 regardless of how much time I have, so if --

23 MR. LINVILLE: Okay.

24 MR. McKENNA: Five minutes or so.

25 (Recess taken.)

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1 BY MR. McKENNA:

2 Q. Have you been a member of any advocacy group
3 with respect to the issue of smoking and health?

4 A. No.

5 Q. How about any groups that concern themselves
6 with the welfare system in this country?

7 MR. LINVILLE: Object to the form of the
8 question.

9 A. No.

10 Q. Is the additional work that you expect to do
11 prior to supplementation, is that going to be
12 involved in rereviewing the materials you already
13 have, or do you expect to be doing additional
14 research?

15 A. I'm going to continue to review the material I
16 already have. As I say, some of it has -- I've only
17 seen a couple of days ago, and if there -- if more
18 comes in, then I will also evaluate that.

19 Q. When you reviewed the plaintiffs' expert damages
20 report, did you draw any conclusions about its
21 accuracy or proprietary?

22 A. I didn't --

23 MR. LINVILLE: Object to the form.

24 A. I didn't even attempt to.

25 Q. And would it be fair to say that the only aspect

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1 of that damages issue that you feel qualified to
2 offer any opinion on is the extent to which fraud and
3 abuse may have inflated the damages of the
4 plaintiffs?

5 A. Yes, that's all I'm looking at.

6 Q. Do you have a recollection of who Robert Baird
7 was?

8 A. At this time of the day, I'm not sure who I -- I
9 don't -- I'm not sure if he was --

10 It seems to me that he was once McKeever's
11 supervisor, but I simply cannot -- I would have to go
12 back and look at that again.

13 Q. Who is Larry Woods?

14 A. Ah. Counsel, I'm simply not able to answer
15 these. Too confused. I think I confused Baird with
16 Woods.

17 Q. Wesley Book, who is he?

18 A. I don't remember other than the name.

19 Q. You recently received an affidavit from Reatha
20 Clark, who characterized herself as a partner of
21 Coopers & Lybrand LLP. Do you recall seeing that?

22 A. Yes, I do.

23 Q. And her affidavit concerned a review of two
24 individual Minnesota Medicaid recipients. Do you
25 understand that?

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1 A. Yes.

2 Q. Did you have a chance to review that document;
3 that is to say, her affidavit?

4 A. I have read it.

5 Q. Did it add anything to your understanding of the
6 issues in this case?

7 A. To the understanding of the general issues in
8 the case?

9 Q. No, the issues that you were asked to address,
10 the issues that are the subject matter of your
11 testimony.

12 A. Well I haven't seen -- that's preliminary. I
13 haven't seen --

14 If there's a follow-up, it's relevant to the
15 issue of the accuracy of claims that are filed.

16 Q. My question is: Did this add anything to your
17 understanding of the issues in this case? Did this
18 tell you something about Medicaid fraud and abuse
19 that you didn't know before you read it?

20 A. About fraud and abuse generally, no.

21 Q. Okay. Is it fair to say that what her affidavit
22 says is that they reviewed some substantial material
23 with respect to two individual Minnesota Medicaid
24 recipients and concluded that there was data with
25 respect to each of them that might be indicative of

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1 inappropriate Medicaid payments?

2 A. Could I see the --

3 I don't have that in front of me.

4 Q. Yes.

5 A. At least I don't think I do.

6 Q. With counsel's consent, I'll just show you this
7 copy and not have one marked, because I'm not ready
8 to have one marked.

9 MR. LINVILLE: That's fine.

10 A. I think that's an accurate statement.

11 Q. And that wasn't news to you, that there might be
12 somebody who got inappropriate Medicaid payments from
13 the Minnesota system; was it?

14 A. Well I consistently said that I believe there
15 are people getting inappropriate payments from the
16 Minnesota Medicaid system.

17 Q. And so now Coopers & Lybrand have discovered two
18 of them. Basically that's it; right?

19 MR. LINVILLE: Object to the form.

20 A. They've issued a report.

21 Q. And that report, does it add anything to your
22 understanding of the issues with respect to the
23 prevalence of fraud and abuse in the Minnesota
24 Medicaid system?

25 A. Well I'll reserve --

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1 There may be more information coming, for one
2 thing, apparently.

3 Sorry.

4 (Witness reviews computer screen.)

5 A. Does it add anything to my knowledge of general
6 issues?

7 Q. No, of course not.

8 MR. LINVILLE: Object to the form. Are you
9 saying no --

10 MR. McKENNA: No, I mean she's --

11 You know what my question was.

12 Q. My question was: Does it add anything to your
13 knowledge of the issues with respect to the
14 prevalence of fraud and abuse in the Minnesota
15 Medicaid system? You know that's the question.

16 A. It shows me that on the claims they've reviewed
17 there were a lot of errors, or appear to be.

18 Q. Right. Okay. Anything else that it shows you?

19 A. It shows some types of errors.

20 Q. Okay. And those errors are of the type that you
21 thought might be the case with respect to your
22 analysis of this system with regard to some other
23 providers -- I mean some other recipients; right?

24 A. Those errors are the types of errors one --

25 Yes, these are some of the types of errors one

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1 would anticipate seeing.

2 Q. What I'm trying to get at, this isn't anything
3 new to you. It didn't add anything, didn't give you
4 any new insight. I mean you believed before that
5 there was a substantial amount of fraud and abuse in
6 the system, and now you've been shown that somebody
7 else has found at least two people who appear to have
8 had or may have had inappropriate payments; right?

9 MR. LINVILLE: Object to the form of the
10 question.

11 A. One, as I said, there may be more coming, so I
12 reserve seeing the whole -- if there's more, what the
13 whole report says, but it also serves to show that,
14 yes, specifically in Minnesota, there are some of
15 these claims that were erroneously paid.

16 Q. Anything else that it tells you?

17 A. Those are the general things that it tells me as
18 I sit and look at it now.

19 Q. Okay. Anything about that that caused you to
20 alter your opinions in any way in this case?

21 A. To alter my opinions?

22 Q. I mean after reading that, you still have the
23 same opinion as before, that there is a substantial
24 amount of fraud and abuse in the Minnesota Medicaid
25 system; true?

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1 A. I still believe that, yes.

2 Q. Nothing else that it does to your opinion?

3 Just trying to understand whether or not this is
4 of great significance to you, that's all.

5 A. As I said, I just got this, and there --
6 apparently there's going to be more coming, and I
7 would like to see the entire report.

8 Q. And after you see the entire report, there may
9 be something additional that occurs to you about
10 that, but as you look at it now, there's nothing more
11 that occurs to you as to the significance of that; is
12 that right?

13 MR. LINVILLE: Object to the form.

14 A. Well, as I say, obviously it's a report saying
15 that here are claims that show apparently specific
16 incidences of inappropriate payment.

17 Q. Okay. Nothing else?

18 MR. LINVILLE: I have no questions.

19 (Discussion off the record.)

20 A. At this moment, no, I don't.

21 MR. McKENNA: All right. Now I have no
22 further questions.

23 MR. LINVILLE: I have no questions.

24 THE WITNESS: Thank you.

25 (Deposition concluded at 5:15 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of JUDITH W. OVERALL at the time and place aforesaid;
6 and that the foregoing transcript consisting of pages
7 189 through 476 is a true and correct, full and
8 complete transcription of said shorthand notes, to
9 the best of my ability.

10 Dated at Minneapolis, Minnesota, this 21st
11 day of November, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, JUDITH W. OVERALL, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 189 through 476, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

7

8

9

10

11

12

13

14

15 JUDITH W. OVERALL

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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